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21
Mr. Justice Clifford

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No 301.

WILLIAM H. NORRIS, JR., PLAINTIFF IN ERROR,

vs.

THOMAS JACKSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 4, 1869.

10 Cal
Jas Miller

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INDEX.

	Original.	Print.
Bond for costs	2	1
Declaration	3	1
Rule to plead	7	3
Plea	8	3
Hearing and judgment	9	4
Bill of exceptions	10	4
Præcipe	13	5
Bond for costs	14	6
Summons	15	6
Declaration	17	7
Demurrer	49	16
Leave to amend	50	16
Default	51	16
Judgment	52	17
Affidavit of Jameson	53	17
Order for execution forthwith	55	18
Execution	57	18
Alias fi. fa	60	19
Receipt from Palmer to Norris	66	21
Marshal's certificate of sale	67	22
Order for deed	72	23
Marshal's deed	76	24
Deed from H. Woodruff to R. Woodruff	83	26
Deed from R. Woodruff to Alba and Luther	88	28
Deed from Alba and Luther to Alden	94	30
Deed from Alden to Gitchell	99	31
Deposition of Harvey Woodruff	103	33
Deposition of M. E. Palmer	111	35

	Original.	Print.
Exhibit A to Palmer's deposition	120	37
Bond for appeal	126	39
Clerk's certificate	129	40
Writ of error	131	40
Citation and service	133	41
Assignment of errors	134	41

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district, and, in the absence pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States, sole judge of said circuit court, on Tuesday the twentieth day of August, in the July term of said court, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-second year.

WM. H. BRADLEY, *Clerk.*

WILLIAM H. NORRIS, JR., *vs.* THOMAS JACKSON. } Ejectment.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and sixty-seven, came
2 William H. Norris, jr., by Messrs. A. S. and C. F. Miller, his attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, his declaration in ejectment against Thomas Jackson, defendant, together with a notice and affidavit thereto attached, and also at the same time filed his bond for costs in said entitled cause; which said bond, declaration, notice, and affidavit are in the words and figures following, to wit:

Bond for costs

UNITED STATES OF AMERICA,
Northern District of Illinois:

Circuit court.—March term, A. D. 1867.

WM. H. NORRIS *vs.* THOMAS JACKSON. } In ejectment.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and, in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and
3 stipulate that execution may issue against my property for any costs taxed against him.

Dated this 29th day of January, A. D. 1867.

ANSON S. MILLER.

Endorsed: Filed, Jan'y 29th, A. D. 1867.

WM. H. BRADLEY, *Clerk.*

Declaration.

STATE OF ILLINOIS, *Cook County, ss:*

In the circuit court United States for northern district of Illinois.—Of the December term, in the year of our Lord one thousand eight hundred and sixty-six.

William H. Norris, junior, resident of Green Bay, in the State of Wis-

consin, plaintiff, by Anson S. Miller & Cyrus F. Miller, his attorneys, comes and complains of Thomas Jackson, a resident of the county of Ogle, in the State of Illinois, defendant, who is hereby notified by notice and copy of declaration according to the statute in a plea of ejectment—

For that whereas the said plaintiff was, on the fourteenth day of
4 July, in the year of our Lord one thousand eight hundred and sixty-six, possessed of certain lands and premises with the appurtenances, situate in , in the said county of Ogle, and known, designated, and described, as follows, viz:

Lots number five (5), six (6), seven (7), and part of lots eight (8) and nine (9), which, on the thirtieth day of January, A. D. 1858, had not been conveyed to Jesse Rood and Hiram Wilder, in school section number sixteen (16), in township number twenty-five (25) north, of range number ten (10) east, of the fourth principal meridian; also the southeast quarter of the southeast quarter of section number three (3), in township and range aforesaid; also lots No. eight (8), nine (9), ten (10), and eleven (11), according to a subdivision of the east half of the northeast quarter of section number fifteen (15), in township number twenty-five (25) north, of range number nine (9) east, of said meridian, according to a plat of the said east half of the northeast quarter of said section No. fifteen (15), made by Henry Wheelock on the eighteenth day of
May, A. D. 1851, now on record in the recorder's office of Ogle
5 County, in the State of Illinois, which said several tracts contain two hundred and eighty-five acres, being the same lands conveyed by William C. Prouty, and Adaline A., his wife, to Harvey Woodruff, by warrantee deed, dated January thirtieth, 1858.

Which said premises the said plaintiff claims to own in fee and is justly and legally entitled to the immediate possession thereof, and the said plaintiff being so possessed thereof, the said defendants afterwards, to wit, on the fifteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, entered into the said premises and ejected the said plaintiff therefrom, and unjustly withhold from the said plaintiff the possession thereof, to the damage of said plaintiff of five thousand dollars; and therefore he bring suit, etc.

ANSON S. MILLER & CYRUS F. MILLER,
Attorneys for Plaintiff.

[50-cts. rev. stamp, cancelled.]

Notice.

To Thomas Jackson, the above-named defendant:

You are hereby notified that the declaration, with a copy whereof you are now herewith served, and to which copy this notice is
6 subjoined, will be filed in the said court on the twenty-ninth (29th) day of January, 1867, being one of days of the December term, 1866, of the said court, or so soon thereafter as counsel can be heard; that upon filing the same a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of such rule; and that if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in the said declaration.

Dated this fourteenth day of January, A. D. 1867.

ANSON S. MILLER & CYRUS F. MILLER,
Attorneys for Plaintiff.

Affidavit.

STATE OF ILLINOIS, *Winnebago County, ss:*

Anson S. Miller, being first duly sworn, upon oath deposes and says, that on the nineteenth day of January, A. D. 1867, he served a
7 copy of the within declaration and notice upon Thomas Jackson, the within-named defendant, by reading and delivering the same to him personally, at his residence on the within-described premises.

ANSON S. MILLER.

Subscribed and sworn to before me this 26th day of January, 1867.

[SEAL.] WILLIAM HULIN,
Clerk County Court.

[5-cts. rev. stamp, cancelled.]

Endorsed: Filed this 29th day of Jan'y, 1867.
WM. H. BRADLEY, *Clerk.*

On the same day, to wit, the 29th day of January, A. D. 1867, in the December term, A. D. 1866, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Rule to plead.

WILLIAM H. NORRIS *vs.* THOMAS JACKSON. } Ejectment.

Now comes the plaintiff, by A. S. & C. F. Miller, his attorneys,
8 who file his declaration in ejectment against the defendant, together with a notice thereto attached, and also an affidavit of due service of a true copy of said declaration and notice upon the defendant; and, on motion of the plaintiff's attorneys, it is ordered by the court that this cause be docketed and the defendant ruled to plead within twenty days, or that his default be entered.

On this day, to wit, the fifth day of February, A. D. 1867, came the above-named defendant, by his attorneys, Mess. Scammon, McCagg & Fuller, who filed in said court his plea in the above-entitled cause; which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States.—Of the December term, A. D. 1866.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

9 THOMAS JACKSON *ads.* WILLIAM H. NORRIS. } In ejectment.

And the said defendant, by Scammon, McCagg & Fuller, his attorneys, comes and defends the wrong and injury, when, &c., and says that he is not guilty of unlawfully withholding the said premises claimed by said

plaintiff in manner and form as alleged in said declaration; and of this he put himself upon the country, &c.

By SCAMMON, McCAGG & FULLER,
His Attorneys.

Endorsed: Filed Feb. 5, 1867.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the eight day of August, in the July term, A. D. 1867, in the record of said court in the above-entitled cause is the following entry, to wit:

Hearing.

WILLIAM H. NORRIS, JR., *vs.* THOMAS JACKSON. } Ejectment.

Now come the parties, by their attorneys, and upon issue joined,
10 by agreement they waive the intervention of a jury, and for trial put themselves upon the court; and, after hearing the evidence and the arguments of counsel, the court, not being sufficiently advised in the premises, takes time to consider.

And on this day, to wit, the twentieth day of August, in the July term, 1867, in the record of said court in the above-entitled cause is the following entry, to wit:

Judgment.

WILLIAM H. NORRIS, JR., *vs.* THOMAS JACKSON. } Ejectment.

The court having considered and being now fully advised upon the issue heretofore submitted herein, finds the defendant not guilty. It is thereupon considered by the court that the defendant go hence without day, and that he have and recover of the plaintiff his costs by him about his defense in this behalf expended, amounting to the sum of dollars and cents, and that he have execution therefor.

On the hearing of the above-entitled cause the following exceptions were taken and were allowed by the court, and are as follows, to wit:

Bill of exceptions.

STATE OF ILLINOIS, *Cook County, ss:*

11 In the circuit court of the United States for the northern district of the State Illinois.—July T., 1867.

WILLIAM H. NORRIS, JUNIOR, *vs.* THOMAS JACKSON. } Action, ejectment.—Bill of exceptions.

Be it remembered that on the trial of this cause at the July term of said court, A. D. 1867, it was agreed & stipulated by the parties, that

on the 16th day of February, A. D. 1858, Harvey Woodruff was the owner and seized in fee of the lands in controversy—from whom both parties derive their title to said premises, respectively; the plaintiff by judicial sale; the defendant as the lessee of Hiram Gitchell, a grantee, by sundry intermediate conveyance from said Woodruff. The plaintiff, to support his title, read in evidence a record of suit in said court wherein M. E. Palmer is plaintiff, and H. Woodruff & Wm. Cameron are defendants, dated 1858; the transcript of which record is in the word & figures following, to wit:

12 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district, and, in the absence pro tempore of the Hon. John McLean, one of the justices of the Supreme Court of the United States, sole judge of said circuit court, on Tuesday, the sixteenth day of February, in the year of our Lord, one thousand eight hundred and fifty-eight, in the December term of said court, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the eighty-second year.

WM. H. BRADLEY, *Clerk.*

M. E. PALMER
vs.
H. WOODRUFF & WILLIAM CAMERON.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

13 Be it remembered that on the twenty-first day of January, in the year of our Lord one thousand eight hundred and fifty-eight, came M. E. Palmer, by Cornell, Waite & Jameson, his attorneys, and filed in the office of the clerk of the United States circuit court for the northern district of Illinois, at Chicago, in the district aforesaid, his præcipe for a summons against H. Woodruff & William Cameron, and also at the same time filed his bond for costs in said entitled cause; which said præcipe and bond are in the words and figures following, to wit:

Præcipe.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court.—December term, A. D. 1857.

M. E. PALMER
vs.
H. WOODRUFF & WILLIAM CAMERON. } In assumpsit.—Damages, $1,300.

14 The clerk of said court will issue a summons in the above cause, directed to the marshal of said district, in a plea of trespass on the case upon promises, returnable on the thirtieth day of January, A. D. 1858, to the damage of the plaintiff of thirteen hundred dollars.

CORNELL, WAITE & JAMESON,
Plaintiff's Attorney.

To WILLIAM H. BRADLEY, Esq., *Clerk.*
CHICAGO, *Jan. 19th*, 1858.

Endorsed: Filed this 21st day of January, 1858.
WM. H. BRADLEY, *Clerk.*

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of U. S.—December term, A. D. 1857.

M. E. PALMER
vs.
H. WOODRUFF ET AL. } In assumpsit.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any
15 of the officers of this court, and, in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this nineteenth day of January, A. D. 1858.

PAUL CORNELL,

Endorsed: Filed, Jan'y 21st, A. D. 1858.

WM. H. BRADLEY, *Clerk.*

And on the same day, to wit, the twenty-first day of January, A. D. 1858, a summons issued out of said court in the above-entitled cause; which said summons, together with the return of the marshal thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you that you summon H. Woodruff and William
16 Cameron, if they shall be found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, at the term thereof now being holden at Chicago, in the district aforesaid, on the thirtieth day of January, instant, to answer unto M. E. Palmer in a plea of trespass on the case upon promises, to his damage, as he alleges, of thirteen hundred dollars; and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 21st day of January, in the year of our Lord one thousand eight hundred and fifty-eight, and of our independence the 82d year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

I have served the within by reading the same to the within-
17 named H. Woodruff and Wm. Cameron this 27th day of Jan. 1858.

JAMES W. DAVIDSON,
U. S. Marshal.
By J. C. BULLOCK, *Dep't.*

Endorsed: Returnable Jan'y 30th, term A. D. 1858.

WM. H. BRADLEY, *Clerk.*

Filed Jan'y 30th, A. D. 1858.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the twenty-sixth day of January, A. D. 1858, came M. E. Palmer, complainant, by his attorneys, Messrs. Cornell, Waite & Jameson, and files his declaration in said court in the above-entitled cause; which said declaration is in the words and figures following, to wit:

Declaration.

Circuit court of the United States, northern district of Illinois.—Of the December term, A. D. 1857.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

18 M. E. Palmer, who is a citizen and resident of the State of Wisconsin, plaintiff in this suit, by Cornell, Waite & Jameson, his attorneys, complains of H. Woodruff and William Cameron, late partners, doing business under the name, style, and firm of H. Woodruff & Co., who are both citizens and residents of the State of Illinois, in said district, defendants, who are summoned, &c., in a plea of trespass on the case upon promises—

For that the said defendants heretofore, to wit, on the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, at Sturgeon Bay, to wit, at said district, made their certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to Joseph Allard; in and by which said note, said defendants, by the name, style, and description of H. Woodruff & Co., promised to pay to the said Joseph Allard, or order, the sum of sixty-six dollars and thirty cents one day after the date thereof, for value received; and the said Joseph Allard, who, at the time of
19 commencing this suit, was a citizen of the State of Wisconsin, to whom, or to whose order, said note was payable, afterwards, to wit, on the day and year aforesaid, at Chicago, in the district aforesaid, endorsed said note in writing, by which said endorsement the said Joseph Allard then and there ordered and appointed the said sum of money in said note mentioned to be paid to said plaintiff. By means whereof, and by force of the statute in such case made and provided, the said defendants became liable to pay said plaintiff said sum of money mentioned in said note; and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to the tenor and effect, true intent and meaning, of the said note, and of the indorsement aforesaid, to wit, at the place aforesaid.

And for that also the said defendants heretofore, to wit, on the twenty-ninth day of October, in the year of our Lord one
20 thousand eight hundred and fifty-seven, at Sturgeon Bay, to wit, at the district aforesaid, made their certain other promissory note in writing, bearing date the year and day aforesaid, and then and there delivered the same to one Charles Remington; in and by which said note, said defendants, by the name, style, and description of H. Woodruff & Co., promised to pay to the said Charles Remington, or order, the sum of one hundred and twenty-two and eleven-hundredths dollars one day after the date thereof, for value received; and the said Charles Remington, who, at the time of commencing this suit, was a citizen of the State of Wisconsin, to whom, or to whose order, said note was payable, afterwards, to wit, on the day and year aforesaid, to wit, at the district aforesaid, endorsed said note in writing, by which said endorse-

ment the said Charles Remington then and there ordered and appointed the said sum of money in the said note mentioned to be paid to
21 said plaintiff, and then and there delivered the said note so endorsed to the said plaintiff. By means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay the said plaintiff said sum of money mentioned in said note; and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to the tenor and effect, true intent and meaning, of the said note, and of the indorsement aforesaid, to wit, at the place aforesaid.

And for that also the said defendants heretofore, to wit, on the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, at Sturgeon Bay, to wit, at the district aforesaid, made their certain other promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to one William Warner; in and by which said note said defendants, by the name,
22 style, and description of H. Woodruff & Co., promised to pay to said William Warner, or order, the sum of forty-three and seventeen-hundredths dollars one day after the date thereof, for value received; and the said William Warner, who, at the time of commencing this suit, was a citizen of the State of Wisconsin, to whom, or to whose order, the said note was payable, afterwards, to wit, on the day and year aforesaid, to wit, in the district aforesaid, endorsed said note in writing, by which said indorsement the said William Warner then and there ordered and appointed the said sum of money in said note mentioned to be paid to said plaintiff, and then and there delivered the said note so indorsed to the said plaintiff; by means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said note, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to
23 the tenor and effect, true intent and meaning, of said note, and of the indorsement aforesaid, to wit, at the place aforesaid.

And for that also the said defendants heretofore, to wit, on the twenty-ninth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, at Sturgeon Bay, to wit, at the district aforesaid, made their certain other promissory note in writing, bearing date the day and year aforesaid, and there and then delivered the same to one Martin Finegan; in and by which said note, said defendants, by the name, style, and description of H. Woodruff & Co., promised to pay to said Martin Finegan, or order, one day after the date thereof, the sum of fifty-three dollars and forty-one cents, for value received; and the said Martin Finegan, who, at the time of commencing this suit, was a citizen of the State of Wisconsin, to whom, or to whose order, said note was payable, afterwards, to wit, on the day and year aforesaid, to wit, at
24 the district aforesaid, indorsed said note in writing; by which said indorsement the said Martin Finegan there and then ordered and appointed the said sum of money in said note mentioned to be paid to the said plaintiff, and then and there delivered the said note so indorsed to the said plaintiff; by means whereof, and by force of the statute in such case made and provided, the said defendants became liable to pay said plaintiff said sum of money in said note mentioned, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to the tenor and effect, true intent and meaning, of said note, and of the indorsement aforesaid, to wit, at the place aforesaid.

And for that also the said defendants heretofore, to wit, on the thirtieth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, at Sturgeon Bay, to wit, at the district aforesaid, made their certain other promissory note in writing, bearing date
25 the day and year aforesaid, and then and there delivered the same to one Moses Allard; in and by which said note, the said defendants, by the name, style, and description of H. Woodruff & Co., promised to pay to said Moses Allard, or order, one day after the date thereof, the sum of twenty-nine dollars and ninety cents, for value received; and the said Moses Allard, who, at the time of commencing this suit, was a citizen of the State of Wisconsin, to whom, or to whose order, said note was payable, afterwards, to wit, on the day and year aforesaid, to wit, at the district aforesaid, endorsed said note in writing; by which said indorsement the said Moses Allard then and there ordered and appointed the said sum of money in said note mentioned to be paid to the said plaintiff, and then and there delivered the said note so indorsed to the said plaintiff; by means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said
26 note, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to the tenor and effect, true infent and meaning, of the said note, and of the indorsement aforesaid, to wit, at the district aforesaid.

And for that also the said defendant heretofore, to wit, on the thirtieth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, at Sturgeon Bay, to wit, at the district aforesaid, made their certain other promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to one Albert Vanderberg; in and by which said note, said defendants, by the name, style, and description of H. Woodruff & Co., promised to pay to the said Albert Vanderberg, or order, one day after the date thereof, the sum of thirteen dollars and ninety cents, for value received; and the said Albert Vanderberg, who, at the time of commencing this suit, was a
27 citizen of the State of Wisconsin, to whom, or to whose order, said note was payable, afterwards, to wit, on the day and year aforesaid, to wit, at the district aforesaid, endorsed the said note in writing; by which said endorsement the said Albert Vanderberg then and there ordered and appointed the said sum of money in said note mentioned to be paid to said plaintiff, and then and there delivered the said note so endorsed to the said plaintiff; by means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiff said sum of money mentioned in said note, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to the tenor and effect, true intent and meaning, of the said note, and of the indorsement aforesaid, to wit, at the place aforesaid.

And for that also the said defendant heretofore, to wit, on the
28 thirtieth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, at Sturgeon Bay, to wit, at the district aforesaid, made their certain other promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to one Anton Martineau; in and by which said note, said defendants, by the name, style, and description of H. Woodruff & Co., promised to pay to the said Anton Martineau, or order, one day after the date thereof, the sum of twenty-eight dollars and seventy-six cents, for value received; and the said Anton Martineau, who, at the time of

commencing this suit, was a citizen of the State of Wisconsin, to whom, or to whose order, said note was payable, afterwards, to wit, on the day and year aforesaid, to wit, at the district aforesaid, endorsed said note in writing; by which said endorsement the said Anton Martineau then and there ordered and appointed the said sum of money in said
29 note mentioned to be paid to said plaintiff, and then and there delivered the said note so indorsed to the said plaintiff; by means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay the said plaintiff the said sum of money mentioned in said note, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to the tenor and effect, true intent and meaning, of the said note, and of the indorsement aforesaid, to wit, at the place aforesaid.

And for that also the said defendants heretofore, to wit, on the thirtieth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, at Sturgeon Bay, to wit, at the district aforesaid, made their certain other promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to one Jacob Smith; in and by which said note, said defendants, by the
30 name, style, and description of H. Woodruff & Co., promised to pay to the said Jacob Smith, or order, one day after the date thereof, the sum of eighteen dollars and ninety-seven cents, for value received; and the said Jacob Smith, who, at the time of commencing this suit, was a citizen of the State of Wisconsin, to whom, or to whose order, said note was payable, afterwards, to wit, on the day and year aforesaid, to wit, at the district aforesaid, endorsed said note in writing; by which said endorsement the said Jacob Smith then and there ordered and appointed the said sum of money in the said note mentioned to be paid to said plaintiff, and then and there delivered the said note so endorsed to the said plaintiff; by means whereof, and by force of the statute in such case made and provided, the said defendants became liable to pay the said plaintiff said sum of money mentioned in said note, and being so liable, in consideration thereof, then and there undertook
31 and promised to pay the same to the said plaintiff, according to the tenor and effect, true intent and meaning, of the said note, and of the indorsement aforesaid, to wit, at the place aforesaid.

And for that also the said defendants, heretofore, to wit, on the thirtieth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, at Sturgeon Bay, to wit, at the district aforesaid, made their certain other promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to one Peter Noyen; in and by which said note, said defendants, by the name, style, and description of H. Woodruff & Co., promised to pay to the said Peter Noyen, or order, one day after date, the sum of forty-six dollars and ten cents, for value received; and the said Peter Noyen, who, at the time of commencing this suit, was a citizen of the State of Wisconsin, to whom, or to whose order, said note was payable, afterwards, to wit, on the day and
32 year aforesaid, to wit, at the district aforesaid, indorsed said note in writing; by which said indorsement the said Peter Noyen then and there ordered and appointed the said sum of money in said note mentioned to be paid to said plaintiff, and then and there delivered the said note so indorsed to the said plaintiff; by means whereof and by force of the statute in such case made and provided, the said defendants became liable to pay the said plaintiff said sum of money mentioned in said note, and being so liable, in consideration thereof, then and there

undertook and promised to pay the same to the said plaintiff, according to the tenor and effect, true intent and meaning, of the said note, and of the indorsement aforesaid, to wit, at the place aforesaid.

And for that also the said defendants, heretofore, to wit, on the thirtieth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, at Sturgeon Bay, to wit, at said district, made their
33 other certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to Andrew Finnegan, in and by which said note, said defendants, by the name, style, and description of H. Woodruff & Co., promised the said Andrew Finnegan to pay him, or order, the sum of eighty-nine dollars one day after date thereof, for value received; and the said Andrew Finnegan, who, at the time of commencing this suit, was a citizen of the State of Wisconsin, to whom, or to whose order, the said note was made payable, afterwards, to wit, on the day and year aforesaid, at Chicago, in said district, endorsed said note in writing; by which said endorsement the said Andrew Finnegan then and there ordered and appointed the said sum of money in said note mentioned to be paid to the said plaintiff; by means whereof, and by force of the statute in such case made and provided, the said defendants became liable to pay said plaintiff the said sum of money in said note mentioned, and being so liable, in con-
34 sideration thereof, then and there promised and undertook to pay the same to the said plaintiff, according to the tenor and effect, true intent and meaning, of the said note, and of the endorsement aforesaid, to wit, at the place aforesaid.

And for that also the said defendants heretofore, to wit, on the thirtieth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, at Sturgeon Bay, to wit, at said district, made their certain other promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to Andrew Finnegan; in and by which said note the said defendants, under the name, style, and description of H. Woodruff & Co., promised the said Andrew Finnegan to pay him, or order, one day after the date thereof, the sum of thirty-three and $\frac{03}{100}$ dollars, for value received; and the said Finnegan, who, at the time of commencing this suit, was a citizen of the State of Wisconsin, to whom, or to whose order, the said note was made payable, after-
35 wards, to wit, on the day and year last aforesaid, at Chicago, in said district, endorsed said note in writing; by which said endorsement the said Andrew Finnegan then and there ordered and appointed said sum of money in said note mentioned to be paid to the said plaintiff; by means whereof, and by force of the statute in such cases made and provided, the said defendants became liable to pay said plaintiff said sum of money in said note mentioned, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to the tenor and effect, true intent and meaning, of the said note, and of the endorsement aforesaid, to wit, at the place aforesaid.

And for that also the said defendants heretofore, to wit, on the thirtieth day of October, A. D. 1857, at Sturgeon Bay, to wit, at said district, made their certain other promissory note in writing, bearing date the day and year last aforesaid, and then and there delivered the
36 same to Joseph Levassar; in and by which said note the said defendants by the name, style, and description of H. Woodruff & Co., promised the said Levassar to pay him, or order, one day after the date thereof, the sum of twenty-seven and $\frac{2}{100}$ dollars, for value received; and the said Levassar, who, at the time of commencing this suit, was a citizen of the State of Wisconsin, to whom, or to whose order, the said

note was made payable, afterwards, to wit, on the day and year last aforesaid, at Chicago, in said district, endorsed said note in writing, by which endorsement the said Jos. Levassar then and there ordered and appointed the said sum of money in said note mentioned to be paid to the said plaintiff: by means whereof, and by force of the statute in such cases made and provided, the said defendant became liable to pay said plaintiff said sum of money in said note mentioned, and being so liable, then and there undertook, in consideration thereof, and promised to pay the same to the said plaintiff, according to the tenor and effect,
37 true intent and meaning, of the said note, and of the endorsement aforesaid, to wit, at the place aforesaid.

And for that also the said defendants heretofore, to wit, on the thirtieth day of October, A. D. 1857, at Sturgeon Bay, to wit, at the said district, made their certain other promissory note in writing, bearing date the day and year last aforesaid, and then and there delivered the same to David Remington; in and by which said note the said defendants, by the name, style, and description of H. Woodruff & Co., promised the said Remington to pay him, or order, the sum of thirty-nine and $\frac{45}{100}$ dollars, one day after the date thereof, for value received; and the said David Remington, who, at the time of commencing this suit, was a citizen of the State of Wisconsin, to whom, or to whose order, the said note was made payable, afterwards, to wit, on the day and year last aforesaid, at Chicago, in said district, endorsed the said note in writing; by which said indorsement the said David Remington ordered and appointed
38 the said sum of money in said note mentioned to be paid to the plaintiff; by means whereof, and by force of the statute in such cases made and provided, the said defendants became liable to pay to said plaintiff the said sum of money in said note mentioned, and being so liable in consideration thereof then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect, true intent & meaning, of the said note, and of the said endorsement aforesaid, to wit, at the place aforesaid.

And for that also the said defendants heretofore, to wit, on the thirtieth day of October, A. D. 1857, at Sturgeon Bay, to wit, at said district, made their certain other promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to Albert Richards; in and by which said note, the said defendants, by the name, style, and description of H. Woodruff & Co., promised the said Albert Richards to pay him, or order, one day after the date thereof, twenty-
39 nine and $\frac{10}{100}$ dollars, for value received; and the said Albert Richards, who, at the time of commencing this suit, was a citizen of the State of Wisconsin, to whom, or to whose order, the said note was made payable, afterwards, to wit, on the day and year last aforesaid, at Chicago, in said district, endorsed the said note in writing, by which said endorsement the said Albert Richards ordered and appointed the sum of money in said note mentioned to be paid to the plaintiff; by means whereof, and by force of the statute in such cases made and provided, the said defendants became liable to pay to the said plaintiff the said sum of money in said note mentioned, and being so liable, in consideratо n thereof, undertook and then and there promised to pay the same to the said plaintiff, according to the tenor & effect of the said note, and of the endorsement aforesaid, to wit, at the place aforesaid.

40 And for that also the said defendants heretofore, to wit, on the thirtieth day of October, A. D. 1857, at Sturgeon Bay, to wit, at said district, made their certain other promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to Joseph Allard; in and by which said note, the said defendants,

by the name, style, and description of H. Woodruff & Co., promised the said Allard to pay him, or order, one day after date thereof, the sum of forty-two and $\frac{28}{100}$ dollars, for value received; and the said Joseph Allard, who, at the time of commencing this suit, was a citizen of the State Wisconsin, to whom, or to whose order, the said note was made payable, afterwards, to wit, on the day and year last aforesaid, at Chicago, in said district, endorsed the said note in writing, by which said endorsement the said Joseph Allard ordered and appointed the said sum of money in said note mentioned to be paid to the plaintiff; by means where-
41 of, and by force of the statute in such cases made and provided, the said defendants became liable to pay to the said plaintiff the said sum of money in said note mentioned, and being so liable, in consideration thereof, undertook and then and there promised to pay the same to the said plaintiff, according to the tenor and effect, true intent and meaning, of the said note, and of the endorsement aforesaid, to wit, at the place aforesaid.

And the said plaintiff avers the amount in dispute in this cause, exclusive of costs and expenses, exceeds the sum of five hundred dollars, to wit, at the district aforesaid.

And whereas also the said defendants afterwards, to wit, on the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, to wit, at said county, became and were indebted unto the plaintiff in a large sum of money, to wit, thirteen hundred dollars, for money before that time lent and advanced to said defendants by said plaintiff at said defendant's request,
42 and also in the like sum for money before that time paid, laid out, and expended for said defendants by the said plaintiff, at the like special request of said defendants, and in the like sum for money before that time had and received by said defendants to and for the use of said plaintiff, and also in the like sum for goods, wares, and merchandise before that time sold and delivered by said plaintiff to said defendants at the like special instance and request, and also in the like sum for the labor, care, and diligence of said plaintiff before that time done and performed by said plaintiff for said defendants, and at the like instance and request of said defendants, and also in the like sum then and there found to be due and owing to said plaintiff on an account stated between them, and being so indebted, said defendants, in consideration thereof, then and there undertook and promised to pay said plaintiff said several sums of money above mentioned, when thereunto afterwards requested.

43 Yet the said defendants, not regarding their said promises and undertakings, but contriving, &c., although often requested so to do, have not paid said plaintiff either of said sums of money above mentioned, or any part thereof, but so to do have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiff of thirteen hundred dollars; and therefore he brings this suit, &c.

CORNELL, WAITE & JAMESON,
Plaintiff's Attorneys.

Copies of instruments & account sued upon.

$66\frac{30}{100}$. STURGEON BAY, 28*th Oct.*, 1857.

One day after date, we promise to pay Joseph Allard, or order, the sum of sixty-six & $\frac{30}{100}$ dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) Joseph his × mark Allard.

44 $122\frac{11}{100}$. STURGEON BAY, *29th Oct.*, 1857.

One day after date, we promise to pay Charles Remington, or order, the sum of one hundred & twenty-two & $\frac{11}{100}$ dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) Charles Remington.

$43\frac{17}{100}$. STURGEON BAY, *28th Oct.*, 1857.

One day after date, we promise to pay William Warner, or order, the sum of forty-three & $\frac{17}{100}$ dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) William Warner.

$53\frac{41}{100}$. STURGEON BAY, *29th Oct.*, 1857.

One day after date, we promise to pay Martin Finnegan, or order, the sum of fifty-three & $\frac{41}{100}$ dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) Martin his × mark. Finegan.

45 $29\frac{90}{100}$. STURGEON BAY, *30th Oct.*, 1857.

One day after date, we promise to pay Moses Allard, or order, the sum of twenty-nine $\frac{90}{100}$ dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) Moses Allard.

$13\frac{90}{100}$. STURGEON BAY, *30th Oct.*, 1857.

One day after date, we promise to pay Albert Vandeberg, or order, the sum of thirteen & $\frac{90}{100}$ dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) Albert Vandeberg.

$28\frac{76}{100}$. STURGEON BAY, 30 *October*, 1857.

One day after date, we promise to pay A. Martineau, or order, the sum of twenty-eight & $\frac{76}{100}$ dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) Anton his × mark. Martineau.

46 $18\frac{97}{100}$. STURGEON BAY, *30th Oct.*, 1857.

One day after date, we promise to pay Jacob Smith, or order, the sum of eighteen & $\frac{97}{100}$ dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) Jacob Smith.

$46\frac{10}{100}$. STURGEON BAY, *30th Oct.*, 1857.

One day after date, we promise to pay Peter Noyen, or order, the sum of forty-six $\frac{10}{100}$ dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) Peter Noyen.

$89\frac{00}{100}$. STURGEON BAY, *30th Oct.*, 1857.

One day after date, we promise to pay And'w Finnegan, or order, the sum of eighty-nine dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) Andrew his × mark. Finegan.

47 $33\frac{03}{100}$. STURGEON BAY, 30*th Oct.*, 1857.

One day after date, we promise to pay And'w Finnegan, or order, the sum of thirty-three & $\frac{03}{100}$ dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) Andrew his × mark Finegan.

$27\frac{02}{100}$. STURGEON BAY, 30*th Oct.*, 1857.

One day after date, we promise to pay Joe Levassar, or order, the sum of twenty-seven & $\frac{02}{100}$ dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) Jos. his × mark Levassar.

$39 45. STURGEON BAY, 30*th Oct.*, 1857.

One day after date, we promise to pay David Remington, or order, the sum of thirty-nine & $\frac{45}{100}$ dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) David Remington.

48 $29\frac{10}{100}$. STURGEON BAY, 30*th Oct.*, 1857.

One day after date, we promise to pay Albert Richards, or order, the sum of twenty-nine $\frac{10}{100}$ dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) Albert Richards.

$42\frac{28}{100}$. STURGEON BAY, 30*th Oct.*, 1857.

One day after date, we promise to pay Joe Allard, or order, the sum of forty-two & $\frac{28}{100}$ dollars, for value received.

(Signed) H. WOODRUFF & CO.

(Endorsed:) Jos. his × mark Allard.

H Woodruff & Co. to M. E. Palmer, DR.

To money lent & advanced	$1,300
To money paid, laid out, & expended	$1,300
To money had & rec'd to & for the use of said plaintiff	$1,300
To goods, wares, & m'ch'd'ze sold & delivered	$1,300
To labor & services	$1,300
To balance due on account stated	$1,300

Endorsed: Filed Jan'y 26th, 1858.

WM. H. BRADLEY, *Clerk.*

Filed as amended Feb'y 12th, 1858.

WM. H. BRADLEY, *Clerk.*

49 On this day, to wit, the fourth day of February, A. D. 1858, came the said defendants, by their attorneys, Helm & Clark, and filed their demurrer in said court in the above-entitled cause; which said demurrer is in the words and figures following, to wit:

Demurrer.

Circuit court of the United States for the northern district of Illinois.—Of the December term, A. D. 1857.

H. WOODRUFF & WILLIAM CAMERON
ats.
M. E. PALMER.

And the said defendants, by Helm & Clark, their attorneys, come and defend the wrong and injury, when, &c., and say that the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiffs to have or maintain his aforesaid action thereof against
50 the said defendants, and they, the said defendants, are not bound by law to answer the same; and this they are ready to verify. Wherefore, by reason of the insufficiency of the said declaration in this behalf, the said defendants pray judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against them, &c.

HELM & CLARK,
Defts' Att'ys.

Endorsed: Filed Feb'y 4th, 1858.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the ninth day of February, A. D. 1858, in the December term of A. D. 1857, in the record of said court, is the following entry, to wit:

Leave to amend.

M. E. PALMER
vs.
H. WOODRUFF AND WILLIAM CAMERON. } Assumpsit.

Now co e on to be heard the demurrer of the defendants, here-
51 tofore filed, to the plaintiff's declaration, which, after argument by counsel, is sustained by the court; whereupon, on motion of the plaintiff, by his attorney, leave is granted him by the court to amend his declaration.

On this day, to wit, the fifteenth day of February, A. D. 1858, in the December term of A. D. 1857, in the record of said court, is the following entry, to wit:

Default.

M. E. PALMER
vs.
H. WOODRUFF AND WILLIAM CAMERON. } Assumpsit.

Now comes the plaintiff, by Messrs. Cornell, Waite and Jameson, his attorneys, and it appearing to the court that the defendants have been regularly served with process, and they being now ruled to plead instanter, and failing to plead or answer to said rule, and the said defend-

ants, being now each three times solemnly called, come not,
52 but make default, it is therefore considered by the court that their default be entered, and that the plaintiff have and recover of the defendants his damages.

And on this day, to wit, the sixteenth day of February, A. D. 1858, in the December term of A. D. 1857, in the record of said court is the following entry, to wit:

Judgment.

M. E. PALMER
vs.
H. WOODRUFF AND WILLIAM CAMERON. } Assumpsit.

The defaults of the defendants having been heretofore entered herein, now comes the plaintiff, by Messrs. Cornell, Waite and Jameson, his attorneys, and as the damages of the plaintiff are not certainly known, and, it appearing to the court that this action is instituted upon fifteen several promissory notes of hand for the payment of money only, it is ordered that they be referred to the clerk to assess the damages
53 thereon, and the clerk having assessed said damages at the sum of six hundred and ninety-four dollars and thirty-nine cents, and reported the same to the court, which, being approved:

It is therefore considered and adjudged by the court that the plaintiff have and recover of the defendants the said sum of six hundred and ninety-four dollars and thirty-nine cents, his damages so as aforesaid assessed, together with his costs by him about his suit in this behalf expended, amounting to the sum of forty-three dollars and thirty-six cents, and that he have execution therefor.

On this day, to wit, the nineteenth day of February, A. D. 1858, comes John A. Jameson, one of plaintiff's attorneys, and files his affidavit in the above-entitled cause; which said affidavit is in the words and figures following, to wit:

Affidavit of Jameson.

Circuit court of the United States, northern district of Illinois.—
54 December term, A. D. 1857.

M. E. PALMER
vs.
H. WOODRUFF ET AL.

John A. Jameson, being first duly sworn, deposes and says that he is the attorney of said plaintiff; that he is informed by the deputy marshal of said district that said defendants are, and have been since the service of process in this case, selling out their stock in trade, and therefore this deponent fears and believes this judgment will be in danger of being lost unless execution issue thereon forthwith.

And further saith not.

JOHN A. JAMESON.

Subscribed & sworn to before me this 19th day of February, A. D. 1858.

WM. H. BRADLEY, *Clk.*

Endorsed: Filed February 19th, 1858.

WM. H. BRADLEY, *Clk.*

55 And on the same day, to wit, on the nineteenth day of February, A. D. 1858, in the December term of A. D. 1857, in the record of said court is the following entry, to wit:

Order for execution.

M. E. PALMER
vs.
H. WOODRUFF AND WILLIAM CAMERON. } Assumpsit.

On application of the plaintiff, by his attorney, on affidavit filed, it is ordered by the court that execution issue forthwith on the judgment entered against the defendants herein on the 16th instant.

56 Plaintiff then read the summons issued in said last-named suit and the service and return. (Which said summons, service, & return are set out on page 15 of this record.) Plaintiff also read the declaration of the said last-named plaintiff (Palmer), and the record of the appearance and pleas of the said defendants Woodruff & Cameron (which are heretofore set out on pages 17 & 49 of this record), and date of filing. The plaintiff read in evidence the record of the judgment in said last-named suit (Palmer vs. Woodruff et al.), in said court, dated February 16th, 1858, for $694 39 & costs against said Woodruff and Cameron, in favor of said M. E. Palmer (which is heretofore set out on page 52 of this record). Plaintiff also read in evidence execution issued on said judgment, dated February 19th, 1858, & return endorsed; which said execution & return are in the words and figures following, to wit:

57 *Execution.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you that of the goods and chattels, lands and tenements, of H. Woodruff and William Cameron, defendants, in your district, you cause to be made seven hundred & thirty-seven dollars & seventy-five cents, which M. E. Palmer, plaintiff, lately in our circuit court of the United States for the northern district of Illinois, before the judges thereof, at Chicago, in the district aforesaid, recovered against them for damages which he had sustained, as well by occasion of the non-performance of certain promises and undertakings, as for his costs and charges by him about his suit in this behalf expended, whereof said defendants are convicted as appears to us of record. And have you that money at the clerk's office of our said court
58 in ninety days from the date hereof, to render to the said plaintiff for his damages aforesaid and this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 19th day of February, in the year of our Lord one thousand eight hundred and fifty-eight, and of our independence the 82d year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Endorsed: Fi. fa. No. 1217.

Damages	$694 39	
Costs	43 36	
		$737 75
Defendants' fee bill		50
Collect		737 25

Judgment rendered Feb'y 16th, 1858.

WM. H. BRADLEY, *Clk.*

Came to hand at 5 o'clock p. m., May 6th, 1858.

J. W. DAVIDSON,
U. S. Marshal, per B'k-keeper.

59 I hereby certify that I did, on the 12th day of May, '58, make a demand of the within-named H. Woodruff for money or property with which to satisfy the within execution, and was informed by him that he had neither to turn out upon the same, and, having searched, I have been unable to find anything belonging to him upon which to levy. Therefore this execution is returned wholly unsatisfied. The within-named Wm. Cameron not found in my district.

JAMES W. DAVIDSON,
U. S. Marshal.
By J. C. BULLOCK, *Dep't.*

Mileage $6 90.

Endorsed: Filed May 19th, A. D. 1858.

WM. H. BRADLEY, *Clerk.*

Plaintiff also read in evidence an alias fi. fa., issued on said judgment, dated January 18th, 1865, and the levy on the lands in question, indorsed thereon, Jan'y 24th, 1865, upon which the lands in question were sold to William H. Norris, junior, plaintiff in this suit, by
60 the marshal of said court, on the 3d day of March, 1865, for the sum of $1,099 91, being the amount of the judgment, interest, & costs; which said alias fi. fa., together with the return of the marshall thereon, is in the words and figures following, to wit:

Alias fi. fa.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you again that of the goods and chattels, lands and tenements, of H. Woodruff and William Cameron, defendants, in your district, you cause to be made seven hundred and thirty-seven dollars and seventy-five cents, which M. E. Palmer, plaintiff, lately in our circuit court of the United States for the northern district of Illinois, before the judges thereof, at Chicago, in the district aforesaid, recovered against them, for damages which he had sustained, as well by occasion of the non-performance of certain promises and undertakings in that
61 behalf as for his costs and charges by him about his suit in this behalf expended, whereof said defendants are convicted as appears to us of record. And have you that money at the clerk's office of our

said court in ninety days from the date hereof, to render to the said plaintiff for his damages aforesaid, and this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this eighteenth day of January, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the 89th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Endorsed: Alias fi. fa., No. 4020.

Damages	$694 39	
Costs	43 36	
		$737 75
Marshal's fees in fi. fa		6 90
Defendant's fee bill		50
This alias		1 25
Collect		$746 40

62 Judgment rendered Feb'y 16th, A. D. 1858.

W. H. BRADLEY, *Clerk.*

Received January 24, 1865, at 1 p. m.

J. R. JONES, *U. S. Marshall,*
By A. B. COATES, *Dep't.*

I have, on this 24th day of January, A. D. 1865, under and by virtue of the within writ, by the order and direction of Cyrus F. Miller, one of the attorneys for the plaintiff named in the said writ, levied upon all the following described lands situated, lying, and being in Ogle County, in the State of Illinois, to wit: Lots five (5), six (6), seven (7), and part of lots eight (8), and nine (9), which, on the 30th day of January, A. D. 1858, had not been conveyed to Jesse Rood and Hiram Wilder, in school section No. sixteen (16), in township No. twenty-five (25) north, of range No. ten (10) east, of the fourth (4th) principal meridian. Also the southeast quarter of the southeast quarter of section No. three (3), in township and range aforesaid; also lots Nos. eight (8), nine (9), ten (10), and eleven (11), according to a sub-division of the east half of the northeast quarter of section No. fifteen (15), in township No. twenty-five (25) north, of range nine (9) east, of said meridian, according to a plat of
63 the said east half of the northeast quarter of said section No. fifteen, made by Henry Wheelock, on the 18th day of May, A. D. 1851, now on record in the recorder's office of Ogle County, in the State of Illinois; which said several tracts contain two hundred and eighty-five (285) acres, being the lands conveyed by William C. Prouty and Adaline A., his wife, to Harvey Woodruff, by warranty deed, dated January 30th, 1858.

J. R. JONES, *U. S. Marshal,*
By A. B. COATES, *Deputy.*

I hereby certify that after I had duly advertised, according to law, the lands levied upon by me under and by virtue of the execution hereto attached, and which are described in the certificate and endorsement of levy thereon written and made, for sale at the front door of the court-house, at Oregon, in Ogle County, in the State of Illinois, on the 3rd day of March, A. D. 1865, at the hour of three o'clock in the afternoon of said day, I proceeded. at the time and place aforesaid, to offer
64 said lands in separate parcels for sale for cash, as follows, to wit:

Said lot five in said school section No. sixteen separately, and said lot six in said school section separately, and said lot seven in said school section separately, and said part of lots eight (8), and nine (9), in said school section which, on the 30th day of January, A. D. 1858, had not been conveyed to Jesse Rood and Hiram Wilder, separately, and said southeast quarter of the southeast quarter of said section No. three (3) separately, and said lot No. eight (8), according to said subdivision of the east half of the northeast quarter of said section No. fifteen (15) separately, and said lot No. nine (9), according to said subdivision, separately, and said lot No. ten (10), according to said subdivision, separately, and also said lot No. eleven (11), according to said subdivision, separately; and that when I, so as aforesaid, offered the said lands for sale in separate parcels, no one bid for any or either of said parcels; and that thereupon after the said lands had, so as
65 aforesaid, been offered for sale by me in separate parcels as above mentioned, and no one had bid anything for either of them, I offered the whole of said lands together for sale, whereupon William H. Norris, by E. H. Dutcher, his attorney, bid therefor the sum of ten hundred and ninety-nine dollars and ninety-one cents ($1,099\frac{91}{100}$); and that, that sum being the highest and best bid, and the said Norris the highest and best bidder therefor, the said lands were struck off and sold to him, the said Norris, and that he became the purchaser thereof at said sale for the said sum of ten hundred and ninety-nine dollars and ninety-one cents, and the said sum being the whole amount due upon and required to be collected and made under and by virtue of said execution, including marshal's fees and disbursements thereon, I therefore return said execution wholly satisfied by the sale of the said lands as aforesaid this 3rd day of March, A. D. 1865.

66 J. K. JONES, *U. S. Marshal*,
By P. MUNSON, *Deputy*.

Levy	50
Notice of sale	50
103 miles travel	6 18
3 certificates of sale	75
Recording cert. of sale	2 00
Stamps	10
Per centum	18 90
Printer's fees	9 00
Expenses posting notices	2 00
Ret'g exp'n's	10
	$40 03

Money paid to pl'ff by Wm. H. Norris, as per pl'ff's receipt attached, $1,099 91.

Rec'd of William H. Norris the sum of one thousand and ninety-nine $\frac{91}{100}$ dollars, being the amount bid by said Norris for lands sold by J. R. Jones, esq'r, U. S. marshall, &c., at Oregon, Ills., on the 3d of March, 1865, on ex. in favor of Milo E. Palmer vs. Harvey Woodruff & Wm. Cameron.

March 7, 1865.

MILO E. PALMER,
By CYRUS F. MILLER,
Att'y in Fact.

[2-cts. rev. stamp, cancelled.]

Endorsed: Filed July 13th, A. D. 1866.
WM. H. BRADLEY, *Clerk*.

67 Plaintiff read in evidence a receipt given by Milo E. Palmer to plaintiff, W. H. Norris, for $1,099 91, the amount bid, which said receipt is heretofore set forth in this record on page 66.

Plaintiff also read marshal's certificate of sale of land filed in Ogle County recorder's office; which said certificate is in the words and figures following, to wit:

Marshal's certificate of sale.

UNITED STATES OF AMERICA,
Northern District of Illinois, set:

M. E. PALMER
vs.
H. WOODRUFF AND WILLIAM CAMERON. } Execution No. 4020.

Amount of judgment for damages	$694 39
Costs	43 36
Marshal's fees on fi. fa.	6 90
Defendants' fee bill	50
This alias	1 25
Amount total	$746 40

This will certify that by virtue of an alias writ of fieri facias in the above-entitled cause, issued out of the United States circuit court, bearing date the eighteenth day of January, 1865, upon a judgment rendered at the
68 December term, 1857, I have levied upon the following described lands, situated, lying, and being in Ogle County, in the State of Illinois, to wit: Lots five (5), six (6), seven (7), and part of lots eight (8) and nine (9), which, on the 30th day of January, A. D. 1858, had not been conveyed to Jesse Rood and Hiram Wilder, in school section No. sixteen (16), in township No. twenty-five (25) north, of range No. ten (10) east, of the fourth (4th) principal meridian; also the southeast quarter of the southeast quarter of section No. three (3), in township and range aforesaid; also lots Nos. eight (8), nine (9), ten (10, and eleven (11), according to a subdivision of the east half of the northeast quarter of section No. fifteen (15), in township No. twenty-five (25) north, of range nine (9) east, of said meridian, according to a plat of the said east half of the northeast quarter of said section No. fifteen, made by Henry Wheelock on the 18th day of May, A. D. 1851, now on record in the recorder's office of Ogle County, in the State of Illinois, which said several tracts contain two hundred and eighty-five (285) acres, being the lands conveyed by
69 William C. Prouty and Adaline A., his wife, to Harvey Woodruff, by warranty deed dated January 30th, 1858; and that I proceeded to advertise the same for sale by posting up advertisements in three of the most public places in the county, and publishing the same in the "Ogle County Reporter," a newspaper published weekly at Oregon, in said Ogle County, in the State of Illinois, twenty days previous to the day of sale, stating that I should proceed to sell the same at the front door of the court-house, at Oregon, in said county, in the State of Illinois, on the third day of March, A. D. 1865, at the hour of three o'clock in the afternoon of said day, to the highest and best bidder for cash, to satisfy said execution; and that at the time and place mentioned in the notice of sale, so as aforesaid published and posted, I proceeded to offer said lands in separate parcels for sale for cash as follows, to wit: said lot five in said school section No. sixteen separately, and said lot six in

said school section separately, and said lot seven in said school section separately, and said part of lots eight (8) and nine (9) in said
70 school section, which, on the 30th day of January, A. D. 1858, had not been conveyed to Jesse Rood and Hiram Wilder, separately, and said southeast quarter of the southeast quarter of said section No. three (3) separately, and said lot No. eight (8), according to said subdivision of the east half of the northeast quarter of said section No. fifteen (15), separately, and said lot No. nine (9), according to said subdivision, separately, and said lot No. ten (10), according to said subdivision, separately, and also said lot No. eleven (11), according to said subdivision, separately; and that when I so as aforesaid offered the said lands for sale in separate parcels, no one bid for any or either of said parcels; and that thereupon after the said lands had so as aforesaid been offered for sale by me in separate parcels as above mentioned, and no one had bid anything for either of them, I offered the whole of said lands together for sale, whereupon William H. Norris, by E. H. Dutcher, his attorney, bid therefor the sum of ten hundred and ninety-nine
71 dollars and ninety-one cents; and that, that sum being the highest and best bid, and the said Norris the highest and best bidder therefor, the said lands were struck off and sold to him, the said Norris, and that he became the purchaser thereof at said sale for the said sum of ten hundred and ninety-nine dollars and ninety-one cents, and that the said William H. Norris will be entitled to a deed for the same after the expiration of fifteen months from the date hereof, unless it shall be redeemed according to law.

Given under my hand this third day of March, 1865.

J. R. JONES,
U. S. Marshal Northern District of Illinois,
$1,099$^{91}_{100}$. By P. MUNSEN, *Deputy.*

STATE OF ILLINOIS, *County of* , *ss:*

This instrument was filed for record the 11th day of March, 1865, at the hour of o'clock m., 186 , and duly recorded in book , page .

Recorder.

72 Plaintiff then read in evidence the order of said court authorizing the marshall to make to plaintiff, W. H. Norris, a deed of the said lands; which said order is in the words and figures following, to wit:

Friday, July 13th, in the July term, 1866.

Order for deed.

In the matter of the petition of William H. Norris for marshal's deed.

Now comes the petitioner, by Cyrus F. Miller, esq., his attorney, who files his petition herein, from which it appears, satisfactorily to the court, that on the eighteenth day of January, A. D. eighteen hundred and sixty-five, there remained in said court a judgment, in favor of M. E. Palmer and against H. Woodruff and William Cameron, in full force and effect, not satisfied or cancelled, on which there remained due and unpaid the sum of seven hundred and forty-six dollars and forty cents; and that on said last-named day, to enforce the payment of said sum, an alias
73 writ of fieri facias issued out of and under the seal of said court

against the goods and chattels, lands and tenements, of the said defendants in the above-entitled suit, commanding the marshal of said district to execute said writ; and that on the third day of March, A. D. eighteen hundred and sixty-five, in the life of said writ, and before the return day thereof, in pursuance of previous notice, by virtue of said writ, the said marshal at public vendue, at the front door of the court-house in Oregon, in the county of Ogle, in said State of Illinois (in which last-named county the lands hereinafter described are situate), did offer, sell, and strike off to the said William H. Norris, junior, for the sum of ten hundred and ninety-nine dollars and ninety-one cents, the lands hereinafter described, he being the highest and best bidder therefor; which lands
74 are described as follows, to wit: Lots five (5), six (6), seven (7), and part of lots eight (8), and nine (9), which, on the thirtieth day of January, A. D. eighteen hundred and fifty-eight, had not been conveyed to Jesse Rood and Hiram Wilder, in school section number (16) sixteen, in township No. twenty-five (25) north, of range number ten (10) east, of the fourth (4th) principal meredian; also the southeast quarter of the southeast quarter of section number three (3), in township and range aforesaid; also lots Nos. eight (8), nine (9), ten (10), and eleven (11), according to a subdivision of the east half of the northeast quarter of section number fifteen (15), in township number twenty-five (25) north, of range nine (9) east, of the aforesaid meridian, according to a plat of the said east half of the northeast quarter of said section No. fifteen, made by Henry Wheelock, on the eighteenth day of May, A. D. eighteen hundred and fifty-one, now on record in the recorder's office of Ogle County,
75 in the State of Illinois; which said several tracts contain two hundred and eighty-five acres, being the lands conveyed by William C. Prouty and Adaline A. Prouty, his wife, to Harvey Woodruff, by warranty deed dated January thirtieth, eighteen hundred and fifty-eight; and proof being made that the said lands so sold, nor any part thereof, had been redeemed from said sale, and that more than fifteen months had elapsed since said sale, and that the said purchaser is entitled to a deed of said lands from the marshal of this court, and it being further proved that no deed of said lands has been made by said marshall to the said purchaser, and it further being proved to this court that since the said time of the sale of said lands, the term of commission of the said marshal of this court had expired prior to the said expiration of fifteen months from and after the said day of sale, and that an order
76 of this court is requisite to authorize the present marshal of this court to make to the said purchaser, a deed of said premises; it is therefore ordered that J. Russell Jones, esq., the present marshal of said district, as such, make and deliver to the said William H. Norris, junior, the usual marshall's deed of the aforesaid premises, in pursuance of the rules of this court.

Plaintiff read in evidence marshal's deed of said lands to plaintiff, Norris, duly recorded; which said deed is in the words and figures following, to wit:

Marshal's deed.

Whereas M. E. Palmer did, at the December term of the circuit court of the United States of America for the northern district of Illinois, in the year of our Lord one thousand eight hundred and fifty-seven, by the consideration and judgment of said court, recover a judgment against H. Woodruff and William Cameron for the sum of six hundred and

ninety-four dollars and thirty-nine cents, and costs of suit, upon
77 which judgment an alias writ of fieri facias was issued, dated on the eighteenth day of January, in the year of our Lord one thousand eight hundred and sixty-five, directed to the marshal of the northern district of Illinois, to execute in due form of law, and by virtue of said alias writ of fieri facias, Joseph R. Jones, who was then marshal of the United States for the northern district of Illinois, after the delivery of the same to him, and before the return day thereof, levied upon the land hereinafter described, and afterwards, to wit, on the third day of March, in the year of our Lord one thousand eight hundred and sixty-five, at the front door of the court-house, at Oregon, in Ogle County, in the State of Illinois, offered the said land for sale at public vendue, and the same was struck off and sold to William H. Norris, he being the highest and best bidder therefor, and the time and place of the
78 sale thereof having been first duly advertised according to law, and an order of the circuit court of the United States for the northern district of Illinois, requiring the making, executing, and delivering of these presents to the said William H. Norris, who is in said order described as William H. Norris, junior, having been entered of record:

Now, therefore, know all men by these presents, that I, Joseph R. Jones, marshal of the United States for the northern district of Illinois, and successor in office of the said Joseph R. Jones, late marshal of said district, in consideration of the premises before recited, have granted, bargained, and sold, and do hereby convey, to the said William H. Norris, junior, and his heirs, and assigns, the following described real estate, to wit, all the following described lands situated, lying, and being in Ogle County, in the State of Illinois, to wit: Lots five (5), six (6), seven (7), and part of lots eight (8) and nine (9), which, on the 30th day of January, A. D. 1858, had not been conveyed to Jesse Rood and
79 Hiram Wilder, in school section No. sixteen (16), in township No. twenty-five (25) north, of range ten (10) east, of the fourth (4th) principal meridian; also the southeast quarter of the southeast quarter of section No. three (3), in township and range aforesaid; also lots Nos. eight (8), nine (9), ten (10), and eleven (11), according to a subdivision of the east half of the northeast quarter of section No. fifteen (15), in township No. twenty-five (25) north, of range nine (9) east, of said meridian, according to a plat of the said east half of the northeast quarter of said section No. fifteen, made by Henry Wheelock, on the 18th day of May, A. D. 1851, now on record in the recorder's office of Ogle County, in the State of Illinois, which said several tracts contain two hundred and eighty-five (285) acres, being the lands conveyed by William C. Prouty and Adaline A, his wife, to Harvey Woodruff, by warranty deed, dated January 30th, 1858, to have and to hold the said described premises, with all the appurtenances thereto belonging,
80 to the said William H. Norris, his heirs, and assigns, forever.

Witness my hand and seal at Chicago, in the State and northern district of Illinois, this thirteenth day of July, 1866.

[SEAL.] J. R. JONES,
U. S. Marshal for Northern District of Illinois.

[Rev. stamps of the value of $1 50, cancelled.]

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, William H. Bradley, clerk of the circuit court of the United States in and for the northern district of Illinois aforesaid, do hereby certify

that Joseph R. Jones, marshal of the United States in and for the said district, appeared before me this day in person, and acknowledged that he executed and delivered the foregoing deed of conveyance as such marshal, for the uses and purposes therein set forth, and for no other; he, the said Joseph R. Jones, marshal as aforesaid, being well known to me to be the person who signed, sealed, and delivered said deed
81 as aforesaid.

In witness whereof, I have hereunto set my hand and affixed the seal of the said circuit court thereto this thirteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] WILLIAM H. BRADLEY,
Clerk of the Circuit Court of the United States for the Northern District of Illinois.

Endorsed:

STATE OF ILLINOIS, *Ogle County:*

Filed for record July 18th, 1866, at 6 o'clock p. m., and recorded in book 39 of deeds, on page 410, and examined.

F. G. PETRIE, *Clerk.*

82 The lands in controversy were proved to be in the county of Ogle, Illinois, within said northern district.

Plaintiff then offered to prove that the said Hiram Gitchell, on the 25th day of January, 1865, agreed with attorney of said Milo E. Palmer to pay the said judgment, interest, and costs against said H. Woodruff and William Cameron, in a few days thereafter, and requested that the said premises in controversy should not be advertised and sold, and that the attorney of said M. E. Palmer relied on such agreement, and caused the sale of said lands to be delayed, as requested by said Gitchell, for about thirty days, when said Gitchell refused to pay said judgment as he had agreed, and thereby obtained delay of sale; and that the attorney of said M. E. Palmer, on such refusal, immediately caused the said lands to be advertised and sold by the marshal of said court.

To the introduction of said evidence the defendant's attorney objected, and the court sustained the objection, and excluded the same.

83 The plaintiff's attorney excepted to the ruling of the court, and prayed that his exception be allowed, &c.

Plaintiff then proved defendant, Jackson, in possession of the premises demanded at the commencement of this suit.

The defendant, to maintain the issue on his part, then offered in evidence the following deeds of conveyance:

1. Harvey Woodruff to Russell Woodruff, dated April 12, 1858, recorded April 15, 1858; which said deed is in the words and figures following, to wit:

Deed.—H. Woodruff to R. Woodruff.

This indenture, made this twelfth day of April, in the year of our Lord one thousand eight hundred and fifty-eight, between Harvey Woodruff and Calista Woodruff, his wife, of the town of Seward, county of Winnebago, and State of Illinois, of the first part, and Russell Woodruff, of the town of West Stockbridge, county of Burkshier,
84 and State of Massachusetts, of the second part, witnesseth: That the said partys of the first part, for and in consideration of the sum

of nine thousand dollars, to them in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed, confirmed, and doth hereby grant, bargain, sell, convey, and confirm, unto the said party of the second part, and to his heirs and assigns, forever, all those tracts or parcels of land situate and being in the town of Leaf River, county Ogle, and State of Illinois, and known and described as follows, to wit: Lot five (5), six (6), seven (7), and parts of lots eight (8) and nine (9), which has not already been deeded to Jesse Rood and Hiram Wilder, in school section No. sixteen (16), township No. twenty-five (25), range No. ten (10), east, of the fourth P. M.; also the southeast quarter of the southeast quarter of section No. three (3), township No. twenty-five (25), range ten (10) east, of the fourth P. M.; also lots No. eight (8), nine (9), ten (10), and eleven (11), according to a subdi-
85 vision of the east half of the northeast quarter of section No. fifteen (15), township No. twenty-five (25), range No. nine (9) east, of the fourth P. M., according to a plat and survey of the east half of the northeast quarter of section No. fifteen, made by Henry Wheelock, esq'r, on the 18th day of May, A. D. 1851, a plat of which is on record in the recorder's office of Ogle County, Illinois; the several lots containing in all an area of two hundred and eighty-five acres, more or less; together with all and singular the appurtenances thereunto belonging, or in any wise appertaining; to have and to hold the above-described premises unto the said party of the second part, and to his heirs and assigns, forever; and the said partys of the first part, for themselves & their heirs, executors, and administrators, do covenant and agree to and with the said party of the second part, his heirs, and assigns, that they are well seized of the premises above conveyed, as of a good and indefeasable inheritance in the law in fee simple, and that the said premises are clear of all liens, claims, and incumbrances
86 whatsoever, and of all taxes and assessments for the present and past years. And the said party of the first part the aforesaid premises unto the said party of the second part and his heirs and assigns, against the claim or claims of all and every person whomsoever, and all liens and incumbrances, and the taxes and assessments aforesaid, do and will warrant and forever defend by these presents.

In witness whereof, the said partys of the first part have hereunto set their hands and seals on the day and year first above written.

HARVEY WOODRUFF. [SEAL.]
CALISTA C. WOODRUFF. [SEAL.]

Executed in presence of—
A. S. VAN DYKE.

STATE OF ILLINOIS, *Winnebago County, ss:*

I, A. S. Van Dyke, a notary public in and for the said county, do hereby certify that Harvey Woodruff & Calista C., his wife, personally known to me to be the persons whose names are subscribed to the fore-
going deed as having executed the same, appeared before me
87 this day in person, and acknowledged that they signed, sealed, and delivered the same, as their free and voluntary act and deed, for the uses and purposes therein set forth.

And the said Calista C. Woodruff, personally known to me to be the wife of the said Harvey Woodruff, and as the person who subscribed said deed as such, having been by me made acquainted with the contents and meaning of said instrument of writing, and examined separate and apart from her husband, acknowledged that she executed the same, and

relinquished her dower and all rights whatever, whether of dower or otherwise, in and to the lands and tenements therein mentioned, voluntarily, freely, and without compulsion of her said husband, and that she does not wish to retract.

Given under my hand and notarial seal at Pecatonica, this fourteenth day of April, A. D. 185 .

[SEAL.] A. S. VAN DYKE,
Notary Public.

Endorsed:

STATE OF ILLINOIS, *Ogle County:*

88 Filed for record on the 15th day of April, A. D. 1858, at 1 o'clock p. m. Recorded in book V of deeds, page 658, and examined.

M. W. SMITH, *Recorder.*

2. Russell Woodruff to E. P. Albee and Edwin W. Luther, Dec. 6, 1858; which said deed is in the words and figures following, to wit:

Deed.—R. Woodruff to Alba & Luther.

This indenture, made this sixth day of December, in the year of our Lord one thousand eight hundred and fifty-eight, between Russell Woodruff and Maria W., his wife, of the county of Berkshire, and State of Massachusetts, of the first part, and Edson P. Alba & Edwin M. Luther, of the county of Winnebago, and State of Illinois, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of nine thousand dollars, to them in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and do hereby grant, bargain, sell,
89 convey, and confirm, unto the said party of the second part, and to their heirs and assigns, forever, all those tracts or parcels of land situate and being in the town of Leaf River, county of Ogle, and State of Illinois, and known and described as follows, to wit: Lots five (5), six (6), seven (7), and part of lots eight (8) and nine (9), which was not formerly deeded to Jesse Rood & Hiram Wilder, in school section No. sixteen (16), township No. twenty-five (25), range No. ten (10) east, of the fourth principal meridian; also the southeast quarter of the southeast quarter of section No. three (3), township, range, and meridian as aforesaid; also lots No. eight (8), nine (9), ten (10), and eleven (11), according to a subdivision of the east half of the northeast quarter of section No. fifteen (15), township No. twenty-five (25), range nine (9) east, of the fourth principal meridian, according to a plat and survey of said subdivision, made by Henry Wheelock, esq'r, on the 18th day of May, A. D. 1851, a plat of which is on record in the recorder's office of Ogle County, Illinois; the several lots containing in all an area
90 of one hundred and eighty-five acres, more or less; together with all and singular the appurtenances thereunto belonging, or in any wise appertaining, to have and to hold the above-described premises unto the said party of the second part, and to their heirs and assigns, forever. And the said party of the first part, for themselves and their heirs, executors, and administrators, do covenant and agree to and with the said party of the second part, their heirs, and assigns, that they well seized of the premises above conveyed, as of a good and inde-

feasable inheritance in the law in fee simple, and that the said premises are clear of all liens, claims, and incumbrances whatsoever, and of all taxes and assessments for the present and past years. And the said party of the first part the aforesaid premises unto the said party of the second part, and their heirs and assigns, against the claim or claims of all and every person whomsoever, and all liens and incumbrances,
91 and the taxes and assessments aforesaid, do and will warrant and forever defend by these presents.

In witness whereof, the said party of the first part have hereunto set their hands and seals on the day and year first above written.

RUSSELL WOODRUFF. [SEAL.]
MARIA WOODRUFF. [SEAL.]

Executed in presence of—
WM. S. TUCKER.

STATE OF MASSACHUSETTS, *Berkshire County, ss:*

I, William S. Tucker, one of the justices of the peace in and for said county, do hereby certify that Russell Woodruff & Maria, his wife, personally known to me to be the persons whose names are subscribed to the foregoing deed, as having executed the same, appeared before me this day, in person, and acknowledged that they signed, sealed, and delivered the same, as their free and voluntary act and deed, for the uses and purposes therein set forth. And the said Maria Woodruff, personally known to me to be the wife of the said Russell Woodruff,
92 and as the person who subscribed said deed as such, having been by me made acquainted with the contents and meaning of said instrument of writing, and examined separate and apart from her husband, acknowledged that she had executed the same, and relinquished her dower and all rights whatever, whether of dower or otherwise, in and to the lands and tenements therein mentioned, voluntarily, freely, and without compulsion of her said husband, and that she does not wish to retract.

Given under my hand and seal at Lenox, this tenth day of March, A. D. 1859.

[SEAL.] WM. S. TUCKER,
Justice of the Peace in & for said County of Berkshire.

COMMONWEALTH OF MASSACHUSETTS, *Berkshire, ss:*

I, Henry W. Taft, clerk of the court of common pleas of said county of Berkshire, do hereby certify that William S. Tucker, whose
93 name is subscribed to the certificate or proof of acknowledgment of the annexed instrument and therein written, was, at the time of the taking of such proof or acknowledgment, a justice of the peace within and for said county of Berkshire, duly authorized to take the same, and that I am well acquainted with the handwriting of said justice, and verily believe that the signature to said certificate of proof and acknowledgment is genuine; and I certify that the said instrument is executed and acknowledged according to the laws of this State.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Lenox this tenth day of March, A. D. 1859.

[SEAL.] HENRY W. TAFT, *Clerk.*

Endorsed:

RECORDER'S OFFICE.

STATE OF ILLINOIS, *Ogle County:*

Filed for record on the 30th day of March, A. D. 1859, at 9
94 o'clock a. m., recorded in book X of deeds, page 555, and examined.

M. W. SMITH, *Recorder.*

3. Albee & Luther to Israel Alden, Aug. 16, 1859; which said deed is in the words & figures following, to wit:

Alba & Luther.—Deed to Alden.

21,991.—Filed Aug. 27th, 1859, a 4 p. m.

ALBA AND LUTHER
to
ISRAEL ALDEN.

This indenture, made this sixteenth day of August, in the year of our Lord one thousand eight hundred and fifty-nine, between Edson P. Alba, Fidelia, his wife, and Edwin M. Luther and Abbie A., his wife, of the town of Pecatonica, county of Winnebago and State of Illinois, of the second part, witnesseth: That the said party of the first part, for the first part, and Israel Alden, of the county of Ogle and State aforesaid, and in consideration of the sum of seven thousand & two hundred dollars, to them in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and do
95 hereby grant, bargain, sell, convey, and confirm, unto the said party of the second part, and to his heirs and assigns, forever, all those tracts or parcels of land, situate and being in the county of Ogle and State aforesaid, and known and described as follows, to wit: Lots five (5), six (6), seven (7), eight (8), & nine (9), in section sixteen (16), and southeast quar. of the southeast quarter of section No. three (3), in township No. twenty-five (25), range No. ten east; also lots eight (8), nine (9), ten (10), and eleven (11), in the east half of the northeast quarter of section No. fifteen (15), in township No. twenty-five (25), range No. nine (9) east, containing two hundred and eighty-seven (287) acres, be the same more [more] or less, together with all and singular the appurtenances thereunto belonging, or in any wise appertaining; to have and to hold the above-described premises unto the said party of the second part, and to his heirs, and assigns, forever; and the said party of the
96 first part, for themselves and their heirs, executors, and administrators, do covenant and agree, to and with the said party of the second part, his heirs, and assigns, that they are well seized of the premises above conveyed, as of a good and indefeasable inheritance in the law in fee simple; and that the said premises are clear of all liens, claims, and incumbrances whatsoever, and of all taxes and assessments for the present and past years; and the said party of the first part, the aforesaid premises unto the said party of the second part, and his heirs and assigns, against the claim or claims of all and every person whomsoever, and all liens and incumbrances, and the taxes and assessments, aforesaid, do and will warrant and forever defend by these presents.

In witness whereof, the said party of the first part have hereunto set their hands and seals on the day and year first above written.

97 Executed in presence of—
A. S. VAN DYKE.

E. P. ALBA. [SEAL.]
F. B. ALBA. [SEAL.]
E. M. LUTHER. [SEAL.]
ABBIE A. LUTHER. [SEAL.]

STATE OF ILLINOIS, *Winnebago County, ss:*

I, A. S. Van Dyke, a notary public in and for said county, do hereby certify that Edson P. Alba & Fidelia, his wife, & Edwin M. Luther & Abbie A., his wife, personally known to me to be the persons whose names are subscribed to the foregoing deed, as having executed the same, appeared before me this day, in person, and acknowledged that they signed, sealed, and delivered the same, as their free and voluntary act and deed, for the uses and purposes therein set forth; and the said Fidelia Albie & Abbie A. Luther, personally known to me to be the wives of the said Edson P. Albie & Edwin M. Luther, and as the persons who subscribed said deed as such, having been by me made acquainted with the contents and meaning of said instrument of
98 writing, and examined separate and apart from their husbands, acknowledged that they had executed the same, and relinquished their dower and all rights whatever, whether of dower or otherwise, in and to the lands and tenements therein mentioned, voluntarily, freely, and without compulsion of her said husband, and that she does not wish to retract.

Given under my hand and notarial seal, at Pecatonica this 22nd day of August, A. D. 1859.

[SEAL.] A. S. VAN DYKE,
Notary Public.

Clerk's fees for copy, $1.

STATE OF ILLINOIS, *Ogle County, ss:*

I, Frederick G. Petrie, clerk of the circuit court, and ex officio recorder in and for said county, do hereby certify that the above and foregoing is a true, full, and perfect copy of an instrument of writing of record in the recorder's office in said county, and that the same was filed on the
99 27 day of August, A. D. 1859, at the hour of 4 p. m., and recorded in book X of deeds, on page 585, as appears from the records of my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 18th day of March, A. D. 1867.

[SEAL.] F. G. PETRIE,
Clerk and ex officio Recorder.

[5 cts. rev. stamp, cancelled.]

4. Israel Alden to H. Gitchell, May 24, 1861; which said deed is in the words and figures following, to wit:

Deed.—Alden to Gitchell.

This indenture, made this 24th day of May, in the year of our Lord one thousand eight hundred and sixty-one, between Israel Alden & Hanna Alden, his wife, of the county of Ogle, and State of Illinois, of the first part, and Hiram Gitchell, of the said county of Ogle, and State of Illinois, of the second part, witnesseth: That the said party of
100 the first part, for and in consideration of the sum of seven thousand dollars, to them in hand paid by the party of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quit-claimed, and, by these presents, do grant, bargain, sell, remise, release, and forever quit-claim, unto the said party of the second part, and to his heirs and assigns, forever, all the right, title, and interest of the said party of the first part, in law or

equity, either in possession or expectancy, in and to the following described lands and premises, situate in the county of Ogle, and State of Illinois, namely: Lots No. five (5), six (6), seven (7), eight (8), and nine (9), in section sixteen (16), and the southeast quarter of southeast quarter, with the exception of ten acres, of section No. three (3), in township No. twenty (25), range No. ten (10) east; also lots eight (8), nine (9), ten (10), and eleven (11), in the east half of the northeast quarter of section No. fifteen (15), in township No. twenty-five (25), range No. 9 east, to
101 have and to hold the same, with all the privileges and appurtenances of whatsoever name or nature thereunto belonging, unto the said party of the second part, and to his heirs and assigns, forever.

In witness whereof, the said parties of the first part hereunto set their hands and seals the day and year first above written.

ISRAEL ALDEN. [SEAL.]
HANNAH ALDEN. [SEAL.]

Executed in presence of—
HIRAM S. MARKS.

STATE OF ILLINOIS, *Ogle County, ss:*

I, Hiram Marks, a justice of the peace in and for said county, do hereby certify that Israel Alden, personally known to me to be the person whose name is subscribed to the foregoing deed as having executed the same, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the same as his free and voluntary act and deed, for the uses and purposes therein set forth; and the
102 said Hannah Alden, personally known to me to be the wife of the said Israel Alden, and as the person who subscribed said deed as such, having been by me made acquainted with the contents and meaning of said instrument of writing, and examined separate and apart from her husband, acknowledged that she had executed the same, and relinquished her dower, and all rights whatever, whether of dower or otherwise, in and to the lands and tenements therein mentioned, voluntarily, freely, and without compulsion of her said husband, and that she does not wish to retract.

Given under my hand and [twenty-fourth] seal this 24th day of May, A. D. 1861.

[SEAL.] HIRAM MARKS, *J. P.*

Endorsed:

RECORDER'S OFFICE.

STATE OF ILLINOIS, *Ogle County, ss:*

Filed for record on the 7th day of June, A. D. 1861, at ten o'clock p. m. Recorded in book 27 of deeds, page 541, and examined.

F. G. PETRIE, *Recorder.*

103 It was then admitted that the foregoing conveyances were made for the valuable considerations expressed in said deeds, which were actually paid by the respective grantees in said deeds, and that the said defendant, Jackson, occupied the demanded premises as a tenant of Gitchell.

The defendant then read in evidence the deposition of Harvey Woodruff, as follows—which said deposition was taken on the 26th day of March, A. D. 1867, at Greenville, in the county of Montcalm, and State of Michigan, by John Lewis, esq., commissioner named for that pur-

pose, in a commission issued out of said circuit court of the United States on the 18th day of March, A. D. 1867, in behalf of the said defendant, taken upon direct interrogatories, and is in the words and figures following, to wit:

Deposition of Woodruff.

Interrogatory first. What is your name, age, occupation, and place of residence?

104 Ans. to 1st interog. My name is Harvey Woodruff; I am fifty-six years of age; my occupation is lumbering; my residence is Greenville, Montcalm Co., Mich.

Interrogatory second. Do you know the parties to this suit, or either, and which of them, and how long have you known them, respectively?

Ans. to 2d interog. I do not know either of the parties to this suit.

Interrogatory third. Were you one of the defendants named in a suit brought in the circuit court of the United States for the northern district of Illinois, in the year 1858, by one M. E. Palmer against H. Woodruff and William Cameron, and in which judgment was recovered against said defendants in February of that year?

Ans. to 3d interrog. I was one of the defendants named in the suit referred to in the third interrogatory; which suit was brought in

105 the circuit court of the United States for the northern district of Illinois, in the year 1858, by one M. E. Palmer against H. Woodruff (which was myself) and William Cameron, and in which judgment was recovered against the defendants in February of that year.

Interrogatory fourth. If in answer to interrogatory third you shall state that you were one of the defendants to said suit, please state whether or not the amount of the judgment recovered in said suit was ever paid to said Palmer, and, if so, how, when, and by whom, if you know.

Ans. to 4th interrog. I cannot say as to whether the full amount of the judgment was paid or not. I supposed it was. I paid said Palmer a large amount on the judgment, and myself and said Cameron paid him some on the judgment. The payments were made in land, logs, and timber standing. In the month of May, 1859, the said payments were made, I believe.

Interrogatory fifth. If any money was ever paid to said Palmer

106 on said judgment by you, or if any property was turned over to said Palmer by you on account of said judgment, please state fully whether the same was in full of said judgment, and whether a receipt or receipts were given therefor by said Palmer. If such receipts were given by said Palmer, and the same are in your possession or control, please attach the same to your deposition, or, if you cannot do so, state the contents of all such receipts, as near as you can remember, and where such receipts are, if not in your possession.

Ans. to 5th interrog. No money was paid on said judgment to said Palmer, to my knowledge. But I deeded to him forty acres of land near Sturgeon Bay, Wisconsin, worth four hundred dollars, which was accepted by said Palmer on said judgment, at the time above mentioned, in the month of May, 1859, as near as I can recollect; the defendant Cameron and myself also, at the same time, paid said Palmer

107 about two hundred thousand feet of pine saw-logs, at Sturgeon Bay aforesaid; that was what Palmer and me estimated them at. Palmer agreed to [to] take them on the said judgment, and we let him have them at two dollars and fifty cents per thousand feet, making in all five

hundred dollars for logs which were received by said Palmer on said judgment. We also sold said Palmer some standing timber that we owned near the above-named bay, which was worth three hundred dollars, which made in all twelve hundred dollars that we paid said Palmer on said judgment, as I now recollect. I took a receipt in writing for the amount, but cannot find it, after diligent search, and the same is lost, and I cannot state what the contents of the receipt were, as I do not recollect.

Interrogatory sixth. Did you ever make a deed of any real estate to said Palmer in settlement of the judgment above referred to? If you state the date of any such deeds, if more than one, describe the
108 property conveyed by them, with its value at the date of conveyance; and if such deeds were ever recorded, state when and where, if you know, and if such deeds are in your possession, custody, and control, attach the same to your deposition, and if not, state where they may probably be found, if you know.

Ans. to 6th interrog. I did make a deed to Palmer, as I supposed, in settlement of said judgment. The land was to apply on it, and my understanding was that the land and property we let him have was to be in settlement of said judgment. It was given in May, I think—in May, 1859; I cannot tell its date; I cannot tell the description of the land I deeded to said Palmer; I have no means of knowing now, as I supposed all was settled, and did not charge my mind with it any further, The land was worth four hundred dollars; I think it was recorded; I
109 delivered the deed to said Palmer; I think it was recorded by Palmer, or by his order; can't say when or where, as I do not recollect the name of the county the land is in, but it is in the vicinity of Sturgeon Bay, Wisconsin. The deed is not in my custody, nor under my control; I think that said Palmer has it.

Interrogatory seventh. If any property was transferred or conveyed to said Palmer on said judgment, please state the nature of such property, the date of the transfer, and its value, with your means of knowledge in full.

Ans. to 7th interrog. There was other property transferred to Palmer on said judgment, as I have before stated; two hundred thousand feet of pine saw-logs, worth five hundred dollars, and a quantity of standing pine timber valued at three hundred dollars; the transfer was at the same time the deed above mentioned was given. My means of knowledge of value is this: I was at the time well acquainted with the
110 worth of the logs and timber transferred as above at the place, and the value was as I have stated above.

HARVEY WOODRUFF.

Said plaintiff objects to witness on the ground of interest, & as incompetent, & also that the matter offered to be proved is not admissible in evidence in this suit, & irrelevant. Plaintiff objects to the fourth, fifth, and sixth interrogatories as leading.

March 12th, 1867.

ANSON S. MILLER & CYRUS F. MILLER,
Att'ys for Plaintiff.

The pl'ff then read in evidence the deposition of Milo E. Palmer, as follows—which said deposition was taken on the 22d day of June, A. D. 1867, at the city of Saint Paul, and State of Minnesota, by John McCloud, jr., commissioner named for that purpose in a commission issued out of said circuit court of the United States, on the seventh day of

June, A. D. 1867, in behalf of the said pl'ff & def't; taken upon
111 direct and cross-interrogatories—and is in the words and figures following, to wit:

Deposition of M. E. Palmer.

Interrogatory 1st. What is your name, age, and where do you re-
Interrogatory. side?

Interrogatory 1st. To the first interrogatory on the part of the said plaintiff he answers as follows:

Milo E. Palmer; fifty (50) years; Hennepin County, State of Minnesota.

" 2nd. Do you know the parties, plaintiff & defendant, in the title of these interrogatories named, or either, or which, of them, & how long have you known them, respectively?

Interrogatory 2nd. To the second interrogatory on the part of the plaintiff he answers as follows: Knows Wm. H. Norris, jr.; have known him for the past ten (10) years.

" 3d. Are you acquainted with Harvey Woodruff & William Cameron, or either, & which of them, & how long have you known them, respectively? State fully the time
112 & place of such acquaintance.

Interrogatory 3rd. To the third interrogatory on the part of the said plaintiff he answers as follows: Am acquainted with both; first became acquainted with Harvey Woodruff at Sturgeon Bay, in Wisconsin, some time in April, 1856, and with Wm. Cameron near Pecatonica, in Illinois, some time during the summer of 1856.

" 4. If you answer that you are acquainted with said Woodruff and Cameron, state if you know whether you obtained a judgment against them in said court in the year 1858; also state if you know the amount of such judgment; also state if you know upon what demand or demands, or claim, such judgment was obtained.

Interrogatory 4th. To the fourth interrogatory on the part of the said plaintiff he answers as follows: Yes; six hundred and ninety-four dollars and thirty-nine-cents ($694 39); on promissory notes.

113 Interrogatory 5th. If you answer that you did obtain a judgment against said Woodruff & Cameron, or either of them, in the year 1858 (or near that time), was said judgment in part or fully paid to you, or to your order, in the year 1859, or about that time, by the said Woodruff & Cameron, or either, & which, of them?

Interrogatory 5th. To the fifth interrogatory on the part of the said plaintiff he answers as follows: It was not.

" 6th. Did said Woodruff & Cameron, or either, & which, of them, convey to you, or to your order, a tract of land of about forty acres, or any other quantity or parcel of land, in part payment of said judgment, in said last-named year?

Interrogatory 6th. To the sixth interrogatory on the part of the said plaintiff he answers as follows: They did not.

7th. Did said Woodruff & Cameron, or either, and which,

114 of them, in said last-named year (or thereabouts), deliver to you, or to your order, about 200,000 feet of pine saw-logs (lumber estimated in the logs) at Sturgeon Bay, in Wisconsin, and other lumber in saw-logs, or otherwise, at said bay, or at any other place, of the value of $500 00, or of any other value, in part payment of said judgment, or in full satisfaction thereof?

Interrogatory 7th. To the seventh interrogatory on the part of the said plaintiff he answers as follows: They did not.

" 8th. Did said Woodruff & Cameron, or either, and which, of them, in said last-named year (1859), or at any other time, deliver to you, or to your order, in full or part payment of said judgment, any goods, money, or choses in action, or any other property? State fully.

Interrogatory 8th. To the eight interrogatory on the part of the said plaintiff he answers as follows: Never received anything, from both or either of the parties, in
115 part or in full of said judgment.

" 9th. Did said Woodruff & Cameron, or either, & which, of them, by deed or otherwise, in the said year 1859 (or thereabouts), convey to you, or to your order, a tract of forty acres of land, or any other tract, in payment of said judgment in whole or in part, or for any other purpose? If yea, state all that you now remember of the transactions, and every part, as if particularly thereunto interrogated; and also deliver, to be attached, the deed or deeds, and all other instruments (if any) that you now have in your possession, pertaining to such transaction (if any), as part of your deposition. Also state on what indebtedness of the said Woodruff & Cameron, or either, and which, of them, the said lands or land, if any, were to be credited.

Interrogatory 9th. To the ninth interrogatory on the part of the said plaintiff he answers as follows: Woodruff conveyed to me a deed for forty acres of land (Ex-
116 hibit A), valued at fifty dollars (50), in part payment of a debt of about four hundred dollars ($400) due me for services rendered as foreman of their saw-mill at Sturgeon Bay, Wisconsin; for which deed and amount (fifty dollars) I gave him (Woodruff) a receipt to apply on said amount due me, say (four hundred dollars.)

Interrogatory 10th. Did you, in the year 1859, or at any other time, give to said Woodruff & Cameron, or either, & which, of them, a receipt in writing or otherwise? If yea, state for what purpose you gave such receipt; on what indebtedness; in what amount? and state in what manner, if any, it pertained to said judgment, if any. State fully, as far as you remember, the entire transaction. Also the indebtedness of the said Woodruff and Cameron, or either, & which, of them; how it arose; how pertaining to said judgment, or otherwise; & deliver a copy of such receipt (if any was given), if you have it, to be attached as part of your deposition.

117 Interrogatory 10th. To the tenth interrogatory on the part of the said plaintiff he answers as follows: Have

answered most of these questions. The receipt given had no reference to the judgment; have no copy of the receipt.

Lastly. Do you know of any other matter or thing, touching the matter in question, that may tend to the benefit or advantage of the plaintiff? If yea, declare the same as fully as if particularly thereto interrogated.

Lastly. [Lastly.] To the last interrogatory on the part of the plaintiff he answers as follows: I know of nothing else.

Cross-interrogatory first. Was any money ever paid to you, or to any one for you, by Woodruff and Cameron, or either of them, or by any one for them, or either of them, on account of your judgment against them, mentioned in the direct interrogatories?

Cross-interrogatory 1st. To the first cross-interrogatory on the part of the defendant he answers as follows: There was not.

118 Cross-interrogatory second. Did you, or did any one for you, ever receive any payments or securities in satisfaction or on account of your judgment against Woodruff and Cameron? If yea, state fully when such payments or securities were received, and by whom and from whom, and when, and the amount of the same.

Cross-interrogatory 2nd. To the second interrogatory on the part of the defendant he answers as follows: No.

Cross-interrogatory third. Did the plaintiff in this suit ever pay you any money on account of your judgment against Woodruff and Cameron, after any sale by the marshal of the property of said Woodruff or Cameron, under an execution on your judgment? If yea, state fully when any such payment was made to you, and the amount of the same.

Cross-interrogatory 3rd. To the third cross-interrogatory on the part of the defendant he answers as follows: No.

119 Cross-interrogatory fourth. Did the plaintiff in this suit bid in the property of Woodruff or Cameron, at any marshal's sale of the same, under your judgment against them, for himself, or for you or as your agent, or for any other person? State fully all you may know in relation to the purchase by said plaintiff of said property.

Cross-interrogatory 4th. To the fourth cross-interrogatory on the part of the defendant he answers as follows: I do not know.

Cross-interrogatory fifth. Have you any interest in the result of this suit, and is the title to property in controversy in this suit, which the plaintiff acquired under the marshal's sale on execution in your favor against Woodruff and Cameron, held by said plaintiff for your benefit, in any way?

Cross-interrogatory 5th. To the fifth cross-interrogatory on the part of the defendant he answers as follows: I have not; it is not.

MILO E. PALMER.

120 The deed referred to as Exhibit "A" in the deposition of Milo E. Palmer (above set forth), and accompanying the same, is in the words and figures following, to wit:

Exhibit "A."

This indenture, made the thirteenth day of January, in the year of our Lord one thousand eight hundred and nine, between Harvey Woodruff & Calista Woodruff, his wife, of Pecatonica, Winnebago County, and State of Illinois, partys of the first part, and Milo E. Palmer, of Otumba, county of Door, & State of Wisconsin, party of the second part, witnesseth: That the said parties of the first part, for and in con-

sideration of the sum of fifty dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and, by these presents, doth give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever, all that
121 certain tract, piece, or parcel of land situate, lying, and being in the county of Door & State of Wisconsin, and particularly described as follows, to wit: The southeast quarter of the northwest quarter of section three (3) in township twenty-seven (27) of range twenty-six (26), containing forty (40) acres of land, be the same more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and all the estate, right, title, interest, claim, or demand whatsoever of the said partys of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises, and their hereditaments and appurtenances, to have and to hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part, and to his heirs and assigns, forever; and the said Harvey Woodruff & Woodruff, his wife, for
122 themselves & for their heirs, executors, and administrators, doth covenant, grant, bargain, and agree, to and with the said party of the second part, his heirs and assigns, that, at the time of the ensealing and delivery of these presents, they are well seized of the premises above described, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee simple, and that the same are free and clear from all incumbrances whatever; and that the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, they will forever warrant and defend.

In witness whereof, the said parties of the first part hath hereunto set their hands and seals the day and year first above written.

HARVEY WOODRUFF. [SEAL.]
CALISTA C. WOODRUFF. [SEAL.]

Sealed and delivered in presence of—
A. S. VAN DYKE.

123 STATE OF ILLINOIS, *Winnebago County, ss:*

I, A. S. Van Dyke, a notary public for the town of Pecatonica, in said county, do hereby certify that Harvey Woodruff & Calista, his wife, personally known to me to be the persons who subscribed the foregoing deed, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the same as their free and voluntary act and deed, for the uses and purposes therein set forth.

And the said Calista Woodruff, personally known to me to be the wife of the said Harvey Woodruff, and as the person who subscribed said deed as such, appeared before me this day in person, and acknowledged that she had executed the same as such; and having been by me made acquainted with the contents and meaning of said instrument of writing, and on an examination, separate and apart from her husband, she relinquished her dower and all rights whatever, whether of dower
124 or otherwise, in and to the lands and tenements therein mentioned, voluntarily, freely, and without compulsion of her said husband, and that she does not wish to retract.

Given under my hand and notarial seal, at Pecatonica, this 29th day of January, A. D. 1859.

[SEAL.] A. S. VAN DYKE,
Notary Public.

(Endorsed:)

REGISTER'S OFFICE, *Door County:*

Recorded February 4th, 1859, at 5 o'clock p. m., in vol. "B" of deeds, at pages 278, 279, & 280.

JOSEPH HARRIS, *Register.*

At the execution of a commission for the examination of a witness between Wm. H. Norris, plaintiff, and Ridi Jackson, defendant, this paper writing was produced and shown to Milo E. Palmer, and by him deposed unto at the time of his examination, and is the document referred to by him as the paper marked "A" before.

JOHN M. McCLOUD, JR.,
Commissioner.

125 It was then admitted and agreed by both parties to this suit that the term of court at which the judgment was rendered, under which plaintiff claims title, adjourned and closed on the 20th day of February, A. D. 1858, that being the December term, 1857.

It was then agreed by the parties that the premises in question and demanded in the declaration were worth more than two thousand dollars, to wit, eight thousand dollars.

The foregoing was all the cause, and the court thereupon found the issues and rendered judgment for the defendant; to which decision and finding of the court the plaintiff then and there excepted, and prayed that this his bill of exceptions may be signed and sealed, which is done.

THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed August 20, 1867.

WM. H. BRADLEY, *Clk.*

126 On this day, to wit, the fifth day of December, A. D. 1868, came the said plaintiff, by his attorneys, Messrs. A. S. & C. F. Miller, who filed in said court his bond for appeal in said entitled cause; which said bond is in the words and figures following, to wit:

Appeal bond.

Supreme Court of the United States.

WILLIAM H. NORRIS, JR., *vs.* THOMAS JACKSON. } In ejectment.—In error.

Know all men by these presents, that we, William H. Norris, jr., as principal, and Anson S. Miller, as surety, are held and firmly bound unto the above-named Thomas Jackson in the sum of five hundred dollars, to be paid to the said Thomas Jackson, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly, by these presents.

127 Sealed with our seals, and dated this eighteenth day of November, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named William H. Norris hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the eighth circuit and northern district of Illinois, on the twentieth day of August, A. D. 1867:

Now, therefore, the condition of this obligation is such that, if the above-named William H. Norris shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

WM. H. NORRIS, JR. [SEAL.]
ANSON S. MILLER. [SEAL.]

Sealed and delivered in presence of—
MOSES C. BROWN, Jr.
A. W. RUSSELL, *as to W. H. N., Jr.*

128 Endorsed: Approved.

THOMAS DRUMMOND.

Filed Dec'b. 5, 1868.

W. H. BRADLEY, *Clk.*

129 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in said entitled cause, wherein said William H. Norris, jr., is plaintiff, and said Thomas Jackson is defendant, as the same appears of record remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, at my office in the city of Chicago in said district, this seventh day of December, A. D. 1868.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[Five-cent internal revenue stamp, canceled.]

130

131 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The President of the United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you, in said circuit court, between William H. Norris, jr., and Thomas Jackson, in an action of ejectment, a manifest error hath happened to the great damage of the said William H. Norris, jr., as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, dis-

tinctly and openly, you send the record and proceedings aforesaid,
132 with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this twenty-second day of August, in the year of our Lord eighteen hundred and sixty-seven, and of the independence of the United States the ninety-third.

[SEAL.] WM. H. BRADLEY, *Clerk.*

133 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To Thomas Jackson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court for the United States for the northern district of Illinois, wherein William H. Norris, jr., is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas Drummond, this fifth day of December, in the year of our Lord eighteen hundred and sixty-eight.

THOMAS DRUMMOND.

Rec'd a copy of the above citation this seventh day of December, 1868.

SCAMMON, McCAGG & FULLER,
Att'ys for Thomas Jackson, Def't.

134 *Errors assigned.*

And now comes the said plaintiff, by his counsel, and assigns the following errors in the foregoing record:

1. The court erred in rejecting the evidence offered by the plaintiff to prove that after the levy of the alias fi. fa. on the land in question, the said Hiram Gitchell, the landlord of the defendant Jackson, and the real party in interest, agreed to pay the judgment, and requested and obtained from the attorneys holding the same for collection a delay of the sale of the land so levied on for fifteen or more days, when he refused to make payment as he had agreed to do, whereby the marshall's sale of said land was necessarily deferred till eleven days after the lapse of seven years from the said 20th day of February, 1858, that being the last day of the December term, 1857, of said court.

2. That, after the lapse of fifteen months from the sale, said lands not having been redeemed, in whole or in part, and the sale having been reported to and confirmed by the court, and the marshall ordered to make a deed of said land to the plaintiff Norris, the purchaser thereof, no appeal having been taken from such order, and the deed having been made to said Norris in pursuance of said order, the matter became res
135 judicata, and the court erred in permitting the validity of the

marshall's deed to Norris to be attacked, for the reason that the sale of the land was made after the lapse of seven years from the date of the judgment.

3. The court being one of general jurisdiction, and having jurisdiction of the subject-matter and of the person of the defendants, with the authority to issue the alias fi. fa., and the lands being subject to the lien of the judgment when the said alias fi. fa. was issued and levied upon said land, and the sale having been made within the lifetime of the writ, the court erred in holding the marshall's sale and deed void, for the reason that such sale was made after the expiration of seven years from the rendition of the judgment.

4. The court trying the case without the intervention of a jury, which was waived, erred in deciding for the defendant, against the evidence & contrary to law.

ANSON S. MILLER,
CYRUS F. MILLER,
For Pl'ff in Error.

(Indorsement on record;) N. Illinois C. C. U. S. No. 301. William H. Norris, jr., plaintiff in error, vs. Thomas Jackson.

Filed 4th December, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 301.

WILLIAM H. NORRIS, JR., PLAINTIFF IN ERROR,

vs.

THOMAS JACKSON, DEFENDANT IN ERROR,

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

SUPREME COURT OF THE UNITED STATES.

No. 301.

WILLIAM H. NORRIS, JR., PLAINTIFF IN ERROR,

vs.

THOMAS JACKSON, DEFENDANT IN ERROR,

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

PLAINTIFF'S BRIEF.

The Plaintiff and Defendant both derive title to the lands in question from HARVEY WOODRUFF. Record pp 4-5 Folios 11

The Plaintiff by Judicial sale—Record pp 23-24-25; Folios 72-80

The Defendant, as tenant of HIRAM GITCHEL, who is a grantee of said WOODRUFF by sundry mesne conveyances, and the real defendant in this suit.

HISTORY OF THIS CAUSE.

At the December Term A. D. 1857 of the Circuit Court of the United States for the Northern District of Illinois, in a suit then pending in said Circuit Court, wherein M. E. PALMER was Plaintiff and H. WOODRUFF and WILLIAM CAMERON were defendants, the defendants having been personally served by summons (action assumpsit—demand $1,300.00:) on the 16th day of February 1858, being yet of said Term, said Plaintiff PALMER obtained a judgment against said Defendants for the sum of $694.39, Damages, and Costs of Court assessed at $43.36. Record p 18 Folios 56-57-58

The December Term of said Court adjourned to the next term in course on the 20th of February 1858. On petition, an execution was issued on said judgment, on the 19th day of February 1858 and returned by the Marshal of said Court on the 19th of May, 1858, not satisfied in any part. On the 18th day of January, 1865, said judgment then remaining in full force in law, and not satis-

Record p 18

fied in any part,and being a valid lien on the lands in question, an *alias fi.fa.* was sued out on said judgment against the goods and chattles, lands and tenements of said Woodruff & Cameron, for the sum of $746.40 damages and costs, directed to the Marshal of said Court, which writ said Marshal, on the 24th day of January, 1865, levied upon the following described lands, situate in the County of Ogle, and State of Illinois, in the Northern District of said State, viz: Lots five, six, seven, and part of lots eight and nine, which on the 30th day of January, 1858, had not been conveyed to Jesse Rood and Hiram Wilder, in School Section No. 16, in Township No. 25, north, of Range No. 10, east of the 4th Pridcipal Meridian; also, the s.e.qr of the s.e.qr of Section No. 3, in Township and range aforesaid; also, lots No. eight, nine, ten and eleven, according to a sub-division of the east half of the north-east quarter of Section No. 15, in Township No. 25, north, Range 9, east of the 4th Principal Meridan, according to a plat made by Henry Wheelock, on the 18th day of May,1856, of said north-east quarter of Section No. 15, now on record in the recorder's office of said Ogle County, being the same lands conveyed by William C. Prouty and wife to said Harvey Woodruff by warranty deed, of date January 30th, 1858, of which lands said Woodruff was seized in fee, on the 20th day of February, 1858.

Record in 20 - folio 62

On or about the 26th day of January 1865, said Hiram Gitchel agreed with Palmer's Atty., to pay said judgment, and Gitchel requested and obtained a delay of sale of said lands for about 15 days, when he refused to pay said judgment as he had agreed, and the Marshal advertised and sold said lands under said *fi. fa.* at, Public Vendue at the front door of the Court House in Oregon, Ogle County,Illinois,to said William H. Norris,Jr.,M'ch 3,'65,for the sum of $1,099.91, being judgment interest and costs in full,which sum was paid by said Norris,who received the Marshal's Certificate for a deed, if the land was not redeemed in fifteen months: and on the 9th day of March 1865, said Marshal filed a certificate of said sale in the Recorder's Office of said Ogle County, and said *alias fi fa.* was returned by said Marshal fully satisfied. On the expiration of said fifteen months the lands not having been redeemed, on July 13th, 1866, said sale was reported to and approved by the Court, and the Marshal ordered to convey the lands so sold to said William H. Norris, Junior, by the usual Marshal's deed, which is the deed under which the plaintiff Norris claims the lands in question.

JUDGMENT LEINS IN ILLINOIS.

By the statute of the State of Illinois lands are subject to levy and sale like the personality, and the levy on each "would operate from its *date*, and a sale in pursuance of such levy would perfect the title by relation back to the levy," Scates, C. J. in *McClure vs Englehardt*, 17 *Illinois Reports*, 49.—Judgments of Courts of Record are leins on the judgment debtors lands within the County or District for seven years from the last day of the term of

Court at which the judgment was rendered. The lands in question are within the Nothern District of said State, and subject to the lien of the judgment for the term of seven years from the 20th day of February 1858 being the last day of the December Term 1857 of said Court. The *alias fi. fa.* under which the lands were sold was regularly issued and levied upon the lands in question, within the said seven years, and within the lifetime of said writ; and the sale was made and the writ returned to the Court fully satisfied before the return day of said writ. Record p 20 folios 62-63

GROUND OF DEFENCE.

The sole ground of defence relied upon,is that the Marshal's sale of the lands in queston under said *fi. fa.* on the third day of March 1865 was after the lapse of seven years from the last day of the term at which the judgment was obtained, and therefore a nullity, and the Marshal's, deed to Plaintiff Norris, void. The plaintiff insists that the sale was not a nullity, but legal, and the Marshal's deed to plaintiff Norris of the lands in question valid. The lands not having been redeemed from said sale, on the expiration of fifteen months, as provided by the statute of Illinois, the sale was reported to the court and without opposition by the said defendant Gitchel, or Jackson his tenant; said sale was confirmed, and the Marshal's deed in question ordered by the court,and thus the order became a part of the Record of said Court,and conclusive between the parties as "*Res Judicata inter partes.*" The objection to this sale does not question the jurisdiction of the Court or its authority to issue the said alias *fi. fa.*, or the authority of the Marshal to sell; the levy and sale having been made within the life of the writ. The sale was not a nullity, for the Marshal could justify under the writ.—10 *Peters*, 474. The sale and deed were by the Court declared valid, which judgement has now become *inreversible* by lapse of time, and cannot now be questioned in this coleateral matter.

Voorhees vs. Bank of the U. S. 10 *Peters* 472.
Griffiith et. al. vs. Bogert et. al., 18 *Howard* 164.
Green vs. Van Buskirk, 5 *Wallace*, 307.
Minnesota vs. National Co. 3 *Wallace* 332.
Gregnon vs. Astor, 2 *Howard*, 506.
Florentine vs. Barton, 2 *Wallace*, 157-210.
United States vs. Arredondo, 6 *Peters*, 728-730.
Comstock vs. Crawford, 3 *Wallace*, 396.
Cunningham vs. Cassady, 17 *Vol. N. Y. Court of Appeals*, 276.
Swiggert vs. Harber, et. al. 4 *Scammon Ill.* 364.
Mc Cormick vs. Wheelen Mellock, 26 *Ill.* 119.
Mulford vs. Stareznback, 46 *Ill.* 303.
Goudy vs. Hall, 30 *Ills.* 109.

Buckmaster vs. Carlin, 3 *Scammon Ill.* 104.
Kittredge vs. Emerson 15 *N. H.* 227-263.
Rigg vs. Cook, 4 *Gilman, Ill.* 336.
Phillips vs. Coffee, et. al. 17 *Ill.*, 157.

By Section 13 Chapter 57 of the Statute of the State of Illinois Gitchel, as to the land in question, as the grantee of Woodruff, succeeded to all his rights and liabilites under said sale,and is concluded by said sale and subsequent proceedings. Cunningham vs. Cassidy, 17 N. Y. Court of appeals, 276.

Plaintiff insists that the Court erred in refusing to permit plaintiff to prove that Gitchel with a fraudulent intent, procured the delay of the sale of the land for more than fifteen days, whereby the sale by the Marshal was necessarily eleven days after the lapse of seven years from the said 20th day of February, 1858, and that he should not now be heard to insist on that as invalidating the Marshal's sale and deed of the land to Plaintiff Norris. "No man can take advantage of his own wrong," is an old maxim and without exception.

THE LEVY AND SALE ONE ENTIRE THING.

In contemplation of law there is no lapse of time between the levy of the writ and the consumation of the title under such levy, where it is consumated with reasonable diligence, it being an "entire thing."

Hall vs. Crocker, 3*d Metcalf, Mass.*, 245-247.
Heywood vs. Hildreth, 9 *Mass.*, 293.
Browne vs. Maine Bank, 11 *Mass.*, 153.
Waterhouse vs. Waite, 11*th Mass.*, 207.
McClure vs. Engelhardt, 17*th Ill.*, 47.
Howard vs. Daniel, 2*d N. H.*, 137.
Colburn vs. Pomeroy, 44*th N. H.*, 19.
Pearl vs. Wellman, 3*rd Gilman Ill.*, 311.
Erwin's, Lessee vs. Dundas, 4*th Howard*, 75, "*the levy and sale being an entire thing.*"

In Taylor vs. Doe, 13 Howard, at 294, Daniels, J., deciding on the effect of the levy of an execution on lands of the debtor upon which the judgment was a lien says: "So far as the rights of the parties to the judgment and the subject matter to be effected by those rights were concerned, every thing was determined; all controversy was closed. The law had taken the subject entirely to itself, to be applied by its own authority and its own rules." and

in the light of this decision the attempt to raise the question of the lien of the judgment, after the seizure of the lands, within the seven years' limitation, and within the alias *fi. fa.*, is unmeaning and immaterial.

"The fruit of the judgment is realized."

EFFECT OF A LEVY.

"A levy on excution vests in the officer a special property for the purpose of sale."

Pearl vs. Wellman et al 3 *Gilman, Ill.*, 311.
Pennock vs. McKesson 13 *Serg & Rawl, Penn.*, 144.
Pennock vs. Hart, 8 " " " " 378.
Camden vs. Brady, 8 " " " " 505.
Erwin's Lessee vs. Dundas, 4 *Howard* 74-75.

A levy and condemnation, under an execution, are sufficient to keep a judgment alive, and preserve the lien, without a *scire facias*.

United States vs. Mechanic's Bank, Gilpin, 51.

Statutes of limitation cease to run whenever the subject of their action is committed to a judicial investigation or adjudication. "The law had taken the subject entirely to itself," &c. Taylor vs. Doe, 13 Howard, 294.
Hence the levy and all the steps necessary in perfecting the title, in the purchaser at a judicial sale, is denominated "an entire thing." See also Gaines vs. Hennen, 24 Howard, 569.

FORCE OF THE JUDGMENT.

If the sale by the Marshal on the third of March, 1865, was irregular and therefore voidable, which we cannot admit, it was not a nullity. The Marshal could justify under the writ.

"A judgment or execution irreversible by a Superior Court, cannot be declared a nullity by any authority of law, if it has been rendered by a Court of competent jurisdiction of the parties, and the subject matter with authority to use the process it has issued. It must remain the only test of the respective rights of the parties to it."

Voorhees vs. Bank of the United States, 10 *Peters*, 474.

"The line which separates error in judgment from usurpation of power is very definite, and is precisely that which denotes the cases where a judgment or decree is reversible only by an appellate court, or may be declared a nullity collaterally, when it is offered in evidence in an action concerning the matter adjudicated, or purporting to have been so. In the one case, it is a record importing absolute verity; in the other, mere waste paper; there can be no middle character assigned to judicial proceedings, which are irreversible for error." —10 Peters, 474.

In Blaine vs. the Charles Carter, a ship had been sold under executions issued within ten days after judgment, contrary to the express prohibition of the 23d section of the judiciary act, but no writ of error was taken out. The Court declared the sales were not void, because the marshal could have justified under them, and if voidable, the proper means of destroying their efficiency had not been pursued. 4 Cranch, 328-333.

In Wheaton vs. Sexton, 4 Wheaton, 506, the case turned on the validity of the sale of real estate by the Marshal of the district by virtue of an execution, in which the language of the Court is: "The purchaser depends on the judgment, the levy and the deed. All other questions are between the parties to the judgment and the Marshal, and *immaterial to the purchaser*, *provided* the writ *was duly issued* and the levy made before the return."—10 *Peters*, 477. *Tolmie vs. Thompson*, 2 *Peters*, 157.

If the jurisdiction was improvidently exercised, or in a manner not warranted by the evidence before it, it is not to be corrected at the expense of the purchaser, who had a right to rely upon the order of the court, as an authority, emanating from a competent jurisdiction. 2 *Peters*, 163-168.

When a Court has jurisdiction, it has a right to decide every question that arises in the cause; and whether the decision be correct or not, its judgment. until reversed, is regarded as binding in every other court.—*Elliott. vs. Piersol*, 1 *Peters*, 340. 2 *Peters*, 169.

"In Savage's Assignee vs. Best, 3 *Howard*, 119, Chief Justice Taney delivering the opinion of the Court on the effect of a levy, says: "The levy of a *fi. fa* upon the land of the debtor, undoubtedly renders the lien more specific, and being a necessary step in the execution of a writ, completes the authority of the

officer to sell; and has the further effect of giving continuance both to the authority and the lien, which would otherwise expire with the return of the writ.

Goudy et al. vs. Hall, 30 *Ill.*, 113.
Mulford et al. vs. Stalzenback et al., 46 Ill., 306-308.

THE JUDGMENT CANNOT BE IMPEACHED IN A COLLATERAL PROCEEDING.

"If the Court had jurisdiction of the case, and the officer authority to make the sale, the errors of the one, and the irregularities of the other, are to be inquired into and corrected directly, and not collaterally; either by a resort to an appellate tribunal, or a direct application to the Court issuing the process, and having the right to control it."—Rigg vs. Cook, 4 Gilman, Ill., 348-9. See also Voorhees vs. The Bank of the U. S., 10 Peters, 449. In Buckmaster *et al.* vs. Carlin, 3 Scammon, Ill., 107, in an ejectment suit directly in point, Smith, J., delivering the opinion of the Court, says: "If the jurisdiction, attaches and notice is given, no errors or irregularities which may have been committed during the progress of the cause can render the judgment void. In case of errors or irregularities occurring, they are to be corrected either by an application to the tribunal where they arise, or in an appellate Court by some *direct* proceeding between the parties."

The Statute of Illinois, Chap. 57, Sec. 21, provides that the deed executed by the Sheriff in sale of lands, "shall be evidence that the provisions of the law in relation to sales of lands upon execution, were complied with, until the contrary shall be shown."

In Taylor vs. Thompson, this Court affirmed a principle of the common law, that the sale of a term of years under a *fieri facias*, issued after and while the defendant was in execution under a *ca. sa.* on the same judgment was good when made to a stranger to the execution.—5 Peters, 370.

In Griffith *et al.* vs. Bogert, *et al.* 18 Howard, 164, in an action of ejectment where the validity of a Sheriff's deed was questioned, the Court says: "Finally there is another view of this case which is conclusive, as regards this and all other objections taken by the counsel to the validity of the Sheriff's deed. It is the well-known and established rule of law in Missouri, and elsewhere, that a judicial sale, and title acquired under the proceedings of a court of competent

jurisdiction, cannot be questioned collaterally, except in case of fraud, in which the purchaser was a participant."—Grignon vs. Astor, 2 Howard, 319. Reed vs. Austin, 9 Mo., 722. Landes vs. Perkins, 12 Mo., 239, and other authorities.

"The writ authorized the Sheriff to sell. A sale was made in pursuance thereof by the Sheriff, and a deed executed to the purchaser which was afterwards acknowledged in open Court, according to law. At this time all parties interested could, and would have been heard to allege any irregularity in the proceedings that would justify the Court in setting it aside. The objections to this sale do not reach the power of the Court, or the authority of the Sheriff to sell. The issuing of an execution on a judgment before the stay of execution has elapsed, or after a year and a day without reviving the judgment, and other like irregularities, may be sufficient ground for setting aside the execution or sale on motion of a party to the suit, or any one interested in the proceedings; but when the objections are waived by them, and the judicial sale founded on these proceedings is confirmed by the Court, it would be injurious to the peace of the community, and the security of titles, to permit such objections to the title to be heard in a collateral action. On every view of the case we are of opinion that the title of the purchaser is protectedby the established rules of law." —Griffith *et. al.* vs. Bogert *et· al.*, 18 Howard, 164.

This highest authority is directly in point and conclusive. Neither Jackson, nor Gitchel, the real defendant, with a full knowledge of the proceeding, sought to vacate the levy, set aside the sale, oppose its confirmation, or to redeem the land from such sale, and they are therefore, by their *laches*, concluded from now questioning the plaintiff's title in this collateral action.

CASES CITED BY THE DEFENSE INAPPLICABLE.

In suit of Riggin *et al.* vs. Mulligan, 4 Gilman, Ill., 50, there was a bill to enjoin the Sheriff from selling land on execution issued more than eleven years from the rendition of judgment, which sale was enjoined by the court mainly on the ground of want of diligence.

Negatively the staying of the sale admits, that if the sale had been permitted, the title by such sale would have been good, and therefore it was necessary to enjoin the sale.

The authorities cited to sustain that decision show that in each case the executions were issued after the statutory limitation, and are not therefore of authority. In Little vs. Harvey, 9 Wendell, 157, the Court says: "The execution was not delivered to the Sheriff, and the legal presumption is, was not issued until ten years had elapsed." In Tufts, Administrator vs. Tufts, 18

Wendell, 621, the Court refused to stay the sale of lands on execution issued after the lapse of ten years from docketing the judgment. In suit of Scammon vs. Swartwout, 35 Ill., 326, the defendant, after the lapse of nineteen years from the date of judgment, sued out execution, and therefore is not authority.

In Roe vs. Swart, and TenEyck vs. Swart, 5 Cowen, 294, motion was made to divide the money arising on sales under executions in said suits, which was refused by the Court with this remark: "Clearly the plaintiff cannot enlarge the lien by the *mere act* of issuing execution."

The decisions in Pennsylvania and other States, cited by the defense, are inapplicable in this suit, as they depend upon positive statutory provisions, requiring the sale itself to be made within the time of limitation. There is no such requirement in the law of Illinois.

The Statute of Illinois, Sec. 25, Chap. 57, provides that it shall be the duty of the officer making a levy on land, to make a certificate thereof and file the same in the Recorder's office of the county where the land is situated, and that the levy shall take effect as to creditors and *bona fide* purchasers, from and after the date of such filing.

The cases from other States, cited as authority against the plaintiff, are negatively in his favor; as the levy within the time, but for the local law as to the Sale itself, would make a continued judgment lien unnecessary, provided the sale follow the levy in a reasonable time.

In conclusion, ample authorities in this and other Courts establish these positions:

FIRST.—A levy on execution vests in the officer making it, a special property for the benefit of the judgment creditor, and the property seized is thereby appropriated by law to the payment of the debt, and such levy confers upon the creditor the present unconditional right to have the sale made.

SECOND.—The Marshal's sale having been reported to, and confirmed by the Court, and the lands in question having been conveyed to the plaintiff Norris, under an order of the Court, such confirmation and order, until reversed, are binding in every other Court, and are of themselves evidence of the rights of the plaintiff in the premises.

THIRD.—The errors of a Court can be examined only by an appellate power, and the judgment of the Court confirming the sale, and ordering the conveyance of the land in question, has by lapse of time become irreversible, and cannot be declared a nullity by any authority of law. All errors of the Court or irregularities of the Marshal, if any, must have been corrected directly, either by an appeal to a higher tribunal, or by application to the Court issuing the process. They cannot be inquired into collaterally.

FINALLY—The cases cited by the defense depend on local Statutes, and are at war with a long and unbroken succession of the decisions of this Court which fully sustain the plaintiff's title, and protect it by the established rules of law.

ERRORS ASSIGNED IN THE RECORD.

1. "The court erred in rejecting the evidence offered by the plaintiff to prove that after the levy of the alias *fi. fa.* on the land in question, the said Hiram Gitchel, the landlord of the defendand Jackson, and the real party in interest, agreed to pay the judgment, and requested and obtained from the attorneys holding the same for collection a delay of the sale of the land so levied on for fifteen or more days, when he refused to make payment as he had agreed to do, whereby the marshal's sale of said land was necessarily deferred till eleven days after the lapse of seven years from the said 20th, day of February, 1858, that being the last day of the December term, 1857, of said court.

2. That, after the lapse of fifteen months from the sale, said lands not having been redeemed, in whole or in part, and the sale having been reported to and confirmed by the court, and the marshal ordered to make a deed of said land to the plaintiff Norris, the purchaser thereof, no appeal having been taken from such order, and the deed having been made to said Norris in pursuance of said order, the matter became *res judicata*, and the court erred in permitting the validity of the marshal's deed to Norris to be attacked, for the reason that the sale of the land was made after the lapse of seven years from the date of the judgment.

3, The court being one of general jurisdiction, and having jurisdiction of the subject-matter and of the person of the defendants, with the authority to issue the alias *fi. fa.* and the lands being subject to the lein of the judgment when the said alias *fi. fa.* was issued and levied upon said land, and the sale having been made within the lifetime of the writ, the court erred in holding the marshal's sale and deed void, for the reason that such sale was made after the expiration of seven years from the rendition of the judgment.

4. The court trying the case without the intervention of a jury, which was waived, erred in deciding for the defendant, against the evidence and contrary to law."

ANSON S. MILLER,
CYRUS F. MILLER,
For Pl'ff in Error.

Supreme Court of the United States.

WILLIAM H. NORRIS, JR.,
PLAINTIFF IN ERROR,
—*vs.*—
THOMAS JACKSON,
DEFENDANT IN ERROR.

No. 301.

BRIEF FOR DEFENDANT IN ERROR.

This case presents only this question: Whether, in Illinois, after a judgment has become a lien upon the lands of the judgment debtor for seven years, a sale of the lands, after the expiration of that period, under an execution that was issued and levied during the seven years, is valid as against *bona fide* purchasers of the lands from the judgment debtor.

The Statute of Illinois relating to the liens of judgments upon lands, is as follows:

"All and singular the goods and chattels, lands, tene-
"ments and real estate of every person against whom any
"judgment has been, or hereafter shall be obtained, in
"any court of record, either at law or in equity, for any
"debt, damages, costs, or other sum of money, shall be

"liable to be sold upon execution to be issued upon such "judgment, and the said judgment shall be a lien on such "lands, tenements and real estate, from the last day of "the term of the court in which the same may be ren- "dered, for the period of seven years: Provided, That "execution be issued at any time within one year, on such "judgment, *and from and after the said seven years, the "same shall cease to be a lien on any real estate, as against "bona fide purchasers, or subsequent incumbrances by mort- "gage, judgment, or otherwise*: Provided, That in case the "party in whose favor any such judgment shall have been "entered, shall be restrained by injunction out of chancery, "or order of any judge or court, either from issuing exe- "cution, or selling thereon, the time which he shall be so "restrained shall not be deemed or considered as any part "of the said seven years. The term "real estate" in "this section, shall be construed to include all interest of "the defendant, or any person, to his use, held or claimed "by virtue of any deed, bond, covenant, or otherwise, for "a conveyance, or as mortgagee or mortgagor of lands in "fee, for life or for years."

Rev. Laws of Ill., 1845, sec. 1, p. 300.

The facts in this case are as follows: At the December Term, 1857, of the Circuit Court of the United States for the Northern District of Illinois, M. E. Palmer recovered a judgment against H. Woodruff and William Cameron for $694.39 and costs of suit. (Record, p. 17.)

The plaintiff took out an execution on that judgment, dated February 19, 1858, which the Marshal returned, May 10, 1858, wholly unsatisfied. (Record, pp. 18–19.)

This made the judgment a lien for the period of seven years from the last day of that term, upon the land of the defendants, and it is settled that the liens of the judgments of the Circuit Courts of the United States are co-extensive with the boundaries of the districts in which they are established.

The term of the court, at which the judgment was obtained, ended on the 20th day of February, 1858, and therefore the lien of the judgment continued until the end of seven years from that date, or until February 20th, 1865. (Record, 39; folio 125.)

Harvey Woodruff, one of the judgment debtors, owned the lands in controversy at the time of the rendition of the above mentioned judgment, and consequently they were bound by the lien of the judgment. (Record, pp. 4–5, folio 11.)

He conveyed the lands to Russell Woodruff, by deed dated April 12, 1858, and recorded April 15, 1858, and by sundry mesne conveyances the lands came to Hiram Gitchell, under whom the defendant occupies them as a tenant. (Record, p. 26, folio 84, to Record, p. 32, folio 103.)

It was admitted on the trial below, that the several conveyances from Harvey Woodruff to the landlord of the defendant, were made upon good considerations actually paid by the grantees; they are, therefore, to be treated as *bona fide* purchasers of the lands in question. (Record, p. 32, folio 103.)

On the 18th of January, 1865, Palmer sued out an alias execution on his judgment against Woodruff and Cameron, which was levied on the 24th of January, 1865, upon the premises in dispute, and on the 3d of March, 1865, the Marshal sold them to the plaintiff, who afterwards received a deed for them, and this is the plaintiff's title. (Record, p. 19, folio 60, to Abstract, p. 24, folio 76.)

It appears from this statement of the case, that the lien of the judgment expired on the 20th day of February, 1865; the sale under execution was made on the 3d of March following, and, long before that, all the title which Woodruff had in the premises had passed by divers mesne conveyances to the landlord of the defendant. It will be seen, by reference to the statute cited above, that it is the *judgment* which is a lien upon the lands for seven years, as against *bona fide* purchasers, and not the judgment and execution together; and the argument is, if the judgment has ceased to be a lien at the time of sale under execution, the sale is invalid as against *bona fide* purchasers and incumbrancers, because the levy of an execution cannot extend the lien of the judgment. This was expressly decided by the Supreme Court of Illinois, in the cases of

Riggin et al. v. *Mulligan*, 4 Gilman, 50.
Scammon et al. v. *Swartwout*, 35 Ill. 326.

These cases are directly in point, and are conclusive in this court as to the construction and effect of the statute of the State of Illinois creating judgment liens.

Similar statutes exist in many of the other States, and have uniformly received the same construction. The old-

est and leading case is that of *Little* v. *Harvey*, 9 Wendell, 157.

Tufts' admr. v. *Tufts*, 18 Wendell, 621.
Graff v. *Kipp et al.*, 1 Edwards' Chancery, 620.
TenEyck v. *Swart*, 5 Cowen, 294.

The rule is the same in Pennsylvania.

Davis v. *Ehrman*, 20 Penn. State, 256.
Stephens' Executors' Appeal, 38 Penn. State, 9.

In these Pennsylvania cases, the rule and the reason of it is very clearly stated, and seem to be as follows: The execution has no lien independent of the judgment, but is merely the means whereby the plaintiff makes an existing judgment lien effective. Therefore, if there is no judgment lien at the time of the sale, nothing passes to the purchaser as against *bona fide* purchasers and incumbrancers, from the defendant in the judgment and execution.

The same rule prevails in Mississippi under similar statutes:

Rupert v. *Dantzler*, 12 Smedes & Marshall, 697.
Kilpatrick v. *Byrne, Adm'r., et al.*, 25 Miss. 571.

And in Arkansas.

Trapnall v. *Richardson et al.*, 8 English, 556, *et seq.*
Lawson et al. v. *Jordan et al.*, 19 Ark. 297.

And in California.

Isaac v. *Swift*, 10 Cal. 71.

Also in Tennessee.

Miller's Lessee v. *Estill et al.*, 8 Yerger, 452.

Dickinson's Lessee v. *Collins*, 1 Swan (Tenn.) 576.

It is plain there can be no safe construction and application of the statute, but that which limits the duration of the judgment lien to seven years from the last day of the term at which the judgment was rendered, for if the lien of the judgment can be extended beyond the period of seven years, by issuing and levying an execution while the lien is in force, the question arises, how long it can thus be extended, and who can tell when it has terminated?

The inconveniences and uncertainties which would attend such a construction of the statute are too numerous and obvious to make it necessary to point them out.

The decisions of the Supreme Court of Illinois on this point, supported, as they are, by sound reason and the decisions of other States upon similar statutes, all lead to the conclusion that the plaintiff in error acquired no title by his purchase of the lands in controversy on the 3d of March, 1865, as against the parties holding under the several conveyances from Woodruff, the judgment debtor; and therefore the judgment of the court below was right, and should be affirmed.

This argument is prepared before I have seen that for the plaintiff. I can only judge what it will be by the assignments of error. (Record, p. 41.)

The first error relates to the refusal of the Circuit Court to admit the testimony offered by the plaintiff in error, as appears on Record p. 26, folio 82.

It does not need any argument to show that Gitchell's promise to pay the judgment against Woodruff & Cameron could not extend the judgment lien, and it was the strength of the legal titles which was in controversy, and not the validity or effect of any collateral agreements of the parties.

As to the second and third errors assigned on the record, they relate to the merits of the cause, and have been fully argued. The confirmation by the Circuit Court of the Marshal's sale could not give it any validity or force, beyond what it derived from the provisions of the law under which it was made; and being void by law as against the persons who then held the title derived from the judgment debtor, the action of the Circuit Court was a nullity, and the plaintiff in error took no title by his purchase.

SAM'L. W. FULLER,

Counsel for Defendant in Error.

CHICAGO, *January* 22, 1870.